NEXT ANNUAL MEETING WILL BE HELD AT BUFFALO, N. Y., AUG. 31—SEPT. 1-2

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Statutory Bar Integration Wins in California

GOVERNOR YOUNG on March 31 signed what is known as the "Self-Governing Bar" bill, which the California Bar Association has been advocating for several years. It will be recalled that a similar bill was passed by the previous legislature but was vetoed by Governor Richardson. The bill provides for the creation of a "public corporation, to be known as the State Bar of California, with a board of governors consisting of one member elected from each congressional district and four members elected at large as the governing power. This board, with the approval of the Supreme Court, is to fix qualifications for the practice of law" and provide various regulations for the discipline of the Bar. The San Francisco *Recorder* declares that this is the most forward-looking measure that has been advocated by the lawyers of California. In the same editorial it briefly sketches the history of the movement in that State for Bar integration, which began in 1917 and continued for ten years to be the principal theme at meetings of the California Bar Association. It concludes:

"Through all of the years that the State Bar Association bill has been on the road to enactment its course has been directed by Joseph J. Webb of San Franciso. To his zeal, initiative and devotion is due its ultimate enactment. The organized Bar of California owes a great debt to Mr. Webb for his whole-hearted devotion to this measure, which to him represented an ideal for which to strive. Like a crusader of old he subordinated his own practice to this cause and went up and down the State addressing the lawyers upon the merits, purposes and necessity of effective and all-inclusive organization. He sold the idea to the Bar and through his efforts chiefly it has reached the statute book. His is now the satisfaction of achievement.

"The end, however, is not yet. The measure is not self-executing. Upon the going into effect of the bill the duty will devolve upon the Chief Justice of the Supreme Court to appoint four members of the Bar who, with himself, will constitute a commission to arrange for preliminary organization, to make such rules as may be necessary in connection therewith, call the organization meeting and generally give effect to the act.

"The success of this measure in effecting the reforms deemed desirable by its sponsors for the better and more effective control of the Bar depends altogether upon the Bar itself. Upon the Bar is placed by this bill the entire responsibility for the qualifications, conduct and discipline of its members. This is a job of no mean proportions; but it can be successfully handled if the Bar has the will to perform its task. The machinery is provided for effective work."

Law School Head Appointed to High Judicial Office

DEAN THOMAS W. SWAN of the Yale Law School has been appointed to a seat on the United States Circuit Court of Appeals. The current issue of the *Yale Law Journal* records with deepest regret his resignation from the position he has filled in the University. "It freely recognizes that the appointment of one so admirably qualified in ability, professional attainment and temperament for high judicial office is to be applauded and approved, but it feels none the less keenly, together with the faculty and students, the well nigh irreparable loss suffered in the termination of his leadership of the Yale Law School. The students will sorely miss his quick understanding of their point of view, his helpful sympathy alike in times of good and ill fortune, and his unfailing courtesy and considerateness under all circumstances; the members of the faculty will regret the withdrawal of a

wise leader, a fair and tactful presiding officer, a highly efficient teacher, a valued friend and comrade; but the editorial board and management of this *Journal* suffer a peculiar loss."

Selden Society Publications

THE annual report of the Selden Society for 1926, which has just been issued, gives details as to its publications for 1925, 1926 and 1927. The society was formed "to encourage the study and advance the knowledge of the history of Euglish law," and it now has Prof. Holdsworth of Oxford University as one of its vice-presidents. The following extracts are taken from the report:

"The publication for the year 1925, Volume IX of the Year Books of Edward II, edited by Mr. G. J. Turner, being Volume 42 of the Society's publications, which the Editor was unable to complete in time to issue in that year, has been issued.

"The publication for 1926, Volume XIV, part 2, of the Year Book Series by Mr. W. C. Bolland, being Volume 43 of the Society's publications, has been issued. The Council also have in the Press the *Liber Pauperum* of Vacarius, edited by Professor de Zulueta, which will be issued to members for the year 1927. The Council consider, as the following account shows, this to be an important volume which should be of especial value to the student of English and Roman Law.

"Vacarius, a civilian of the Bolognese School, came to England about 1145 and was one of the brilliant household of Archbishop Theobald. In connexion with lectures delivered by him in 1149, perhaps at Oxford, perhaps at Canterbury, Vacarius compiled a manual of Roman Law afterwards known as the *Liber Pauperum* from its having been designed to suit the purses of poor students who could not afford a complete *Corpus Iuris Civilis*. It became in the closing years of the 12th century the text-book of the Oxford Law School, whose members were nicknamed *pauperistae*. The work survives more or less in several MSS. From the theoretical and educational side Roman Law had a potent influence on English Law at the critical period from the later part of the 12th century till the end of the 13th. Hence for a proper understanding of the period of formation of English Laws it is indispensable to have an account of the study of the Roman texts by the Anglo-Norman civilians. Such a picture can only be drawn from the glosses of Vacarius and his school preserved in the MSS. of the *Liber Pauperum*. This Professor de Zulueta has undertaken. He has made a complete collation of the MS. belonging to Worcester Cathedral, which he has supplemented by a partial collation of the Avranches, Bruges, and Prague MSS. and by Wenck's report of his lost MS. He also has discussed several hitherto unknown Cambridge fragments and has utilised for the first time a number of Oxford fragments. Thus enough material has been collected to enable the legal historian to form a judgment on the Anglo-Norman civilians of the closing years of the 12th and the early years of the 13th century.

"Provisional arrangements have been made for further publications, viz., a volume of "Select Ecclesiastical Pleas," by Professor Hazeltine and Mr. Hilary Jenkinson; a volume of "Select Entries from the Exchequer of Pleas," by Mr. Hilary Jenkinson and Mrs. R. R. Formoy; a volume of "Select Cases on the Law Merchant," Volume II, by Mrs. E. E. Watkins; a volume of "Year Books of Edward IV," by Miss N. Neilson; a volume of "Year Books of Edward II," by Mr. G. J. Turner. The Council announced last year that arrangements had been made for two Year Books of Edward IV, but as it is doubtful if the known MSS. for that reign will be sufficient for more than one volume the Council have engaged Mr. W. C. Bolland to edit another volume for the reign of Edward II.

"The Council have in the Press as an extra volume a new edition of Selden's "Table Talk," based on a specially good MS. belonging to the Honourable Society of Lincoln's Inn, together with Sir E. Fry's account of Selden, reprinted by permission of the Clarendon Press from the Dictionary of National Biography. The volume has been edited by the Literary Director."

The secretary and treasurer of the society in America is Mr. Richard W. Hale, 60 State Street,

Boston. He is anxious to recruit additional members in America. The dues are $10 a year, which entitles members to the publications.

California Judicial Council Amendment Construed

THE recently adopted constitutional amendment providing for a Judicial Council in California was presented for interpretation before the Supreme Court of that State in the case of Hugh Fay, Petitioner, vs. The District Court of Appeal, Second Appellate District, Division Two, et al., decided by the higher court on February 28. The Chief Justice, as Chairman of the Judicial Council, had designated and assigned three judges of the Superior Court of Los Angeles County to sit and hold court as Justices of the District Court of Appeal, at the request of the presiding Justice and because of the congestion of the calendar in the Court of Appeal. The latter court designated the judges so assigned to sit as a separate division of that court, and application was made by a litigant whose case had been placed on calendar for hearing before the assigned judges, for a writ of certiorari to review the order of the Court of Appeal designating them to sit as a separate division. The Supreme Court in its opinion considered the provisions of the Judicial Council amendment in their relation to certain existing sections of the Constitution providing for the membership and organization of the Supreme Court and District Courts of Appeal. It found no fault with the assignment of the judges by the Chairman of the Judicial Council, but ruled that the Appellate Court had no power to create an additional division, thus changing the organization and increasing the membership beyond that provided by the Constitution in other sections, which the court held were not repealed by implication by the judicial amendment. For similar reasons the membership of the Supreme Court could not be increased beyond its constitutional number. From the decision it results that although additional judges may be assigned to these courts to assist when the calendars are congested, some way must be found whereby the assistance can be utilized when the full regular bench is qualified and prepared to sit. Justice Richards, who wrote the opinion, thinks this can readily be done. He says in this connection:

"In the matter of *People* v. *Ruef*, 14 Cal. App. 576, Chief Justice Beatty in the opinion touching a rehearing in the Supreme Court referred interestingly to the methods of work and of the activities of the members of such court preparatory to the final exercise of the judicial functions of the court itself. In addition thereto it may be said with reference to both the Supreme Court and the several District Courts of Appeal that only a small portion of the time of the individual membership of each of said courts is, during any period, occupied in such group action as that of hearing calendars or handing down opinions. During the greater portion of the year the individual members of these courts are occupied in chambers; in examining briefs and records; in library research; in preparing opinions or reviewing those of their associates similarly prepared. These essential labors may be and frequently in the past have been performed by individual justices in cases in which they were qualified to act while their associates with the aid of justices pro tempore sitting in their places were occupied in calling calendars or hearing arguments in which they were disqualified to act, or in which for one reason or another they were unable to be present in court session. The case of *Reeve* v. *Weber*, supra, well illustrates the flexibility of the provisions of the Constitution relating to justices pro tempore prior to the recent amendment; and we can see no serious obstacle in the way of so far enlarging that flexibility as to permit justices or judges, sitting and acting in a pro tempore relation to the regularly constituted courts, performing similar functions when the regularly elected or appointed members thereof were neither disqualified nor unable to act. The putting into operation of such a plan would seem to be merely a matter of routine and as such within the entire control of the members of these courts using the same for the more efficient dispatch of judicial business and the relief of congested calendars, without in any way disturbing the constituent organization of such courts as ordained by the Constitution prior to the adoption of said amendment."

The situation created by this decision, however, appears responsible for the recommendation of the Judicial Council to the Governor and the Legislature that the articles of the Constitution dealing with the judiciary be reconsidered and amended.

A Binder for the Journal

On page X of this issue, readers of the Journal will find an announcement of what we regard as a very satisfactory binder of the Journal. For some time we have been receiving frequent inquiries as to a binder, but heretofore have not been able to find one which we cared to recommend. Many members will no doubt be glad to preserve their Journals for the coming year—and perhaps for past years—in this manner, and we suggest that those who are interested turn to the announcement.

THE JUDICIAL OFFICE AND THE BAR'S RESPONSIBILITY

Rufus Choate's Estimate of the Character Essential to the Judicial Office—Obvious That We Have Not Generally Attained to This Ideal in State and Nation—Bar Should Exert Its Collective Influence Before Political Parties Have Actually Nominated—Means of Forwarding Collective Action*

By Henry K. Jessup
Member of the New York Bar

OUR profession, in which I venture to include those members of it that have been elevated to judicial office, has for centuries been the butt of caustic quips and jests. The student of the classics, the lover of the plays of the Restoration dramatists, the careful reader of Holy Writ, can readily find unkind estimates of the unworthy lawyer, and harsh and scathing characterizations of judges who have prostituted their high office. Pettifoggers, shysters and venal judges have been portrayed to such an extent in literature that it has had a lamentable influence on public opinion in its estimate of our profession as a class.

In the campaign of the American Bar Association for the adoption of canons of professional ethics, we had to reckon with abundant harvests, self-sown in each succeeding generation, of these windblown seeds of jeers and sneers at trickery, knavery or venality on the part of lawyers and judges.

High above these pitiful members of our profession whose conduct warranted the worst that wit or anger could devise by way of criticism, rose in each generation the characters and reputations of great lawyers and honored jurists keeping alive the noble traditions and preserving the ideals of the profession they adorned. Still, when the common people accept a characterization as accurate, which is derogatory to any given class in the community, it must be admitted that there is something wrong in that class, or in its standards of self-administration.

The Christ, excoriating the tricky lawyers in Jerusalem, made use, as though it were a matter of common knowledge, as is assumed in all of his parables, of the example of an unjust judge, an official moved by personal consideration in the performance of his judicial duties, as an illustration to point one of his morals, and obviously it was an illustration that every one of his hearers recognized as normal.

The ideals of great lawyers and of great judges, have varied little throughout the centuries, but the approximations to those ideals are lamentably few, and the examples of departure therefrom are numerous enough to justify the satire with which our literature is filled.

The Greeks and Romans were alive to this failure to measure up to high standards on the part of judges. Horace vigorously asserted that a corrupt judge is not qualified to inquire into the truth. English literature abounds with it. Shakespeare wrote that God alone sat as a judge "that no King can corrupt," thus emphasizing the fact that in his day the primary duty of judges was conceived, by the King who appointed them, to be *to do the King's will*. Bacon, himself not incorruptible, asserted of judges "Above all things integrity is their portion and proper virtue."

David Dudley Field, in an address on the humanness of judges, remarked they are "swayed like other men by vehement prejudices" and added, "This is corruption in reality, give it whatever other name you please."

From the beginning judges were a class set apart. To go no further back than Moses, the great law-giver, in the theocracy which he organized, undertook himself at first to administer God's justice alone, but Jethro, called the Priest of Midian, who had more than the customary influence of a father-in-law, persuaded him to appoint others to exercise judicial functions. Jethro had the right idea. He advised Moses "Provide out of all the people able men such as fear God; men of truth, hating covetousness." These judges were to be a sort of shock-absorber for Moses, who was to continue as a court of last resort. The writer of Genesis comments in closing, "The hard causes they brought to Moses."

The pinnacle of judicial character is reached in that inimitable description in the Book of Job (xxix 8-17) so aptly appropriated by Rufus Choate in his great plea for an appointive judiciary made before the Massachusetts Constitutional Convention.

Coming down to the Anglo-Saxon law, the first theory was that justice was that of the King and reposed in his person. He had the power to adjust controveries between his subjects. In the laws of Hlothaere and Eadric about 676 we find reference to the Stermelda or magistrates presiding over the *methel* or the *thing*.

Ine, King of the West Saxons, ordained that in order that "just law and justly kingly dooms might be settled: we comnand that God's servants rightly hold their lawful rule."

Two centuries later King Alfred's laws began by re-promulgating the Ten Commandments and erected various courts and judicial officers. Edward the Elder exacted of his *Reeves* fidelity to their judicial functions. Canute expressly constituted himself, like Moses, a court of last resort.

After the Conquest we find *Justiciars* appointed by the King from among his favorites.

Under Henry I. Robert, Bishop of Salisbury, "made the office odious." Bassett was "infamous, cruel and corrupt."

The first enlightened and independent Justiciar was Richard de Luci, under Henry II, who framed the "Constitutions of Clarendon."

Magna Charta dealt specifically with reforms demanded in the judicial administration.

*Address befote Cincinnati Bar Assoc., Oct., 1926.

Regular court terms, 4 times a year in every county, XXII.

Promise not to "defer right and justice," XLVII, and

"We will not make any justiciaries, constables, sheriffs or bailiffs, but what are knowing in the law of the realm *and are disposed duly to observe it.*" LIII.

In our Colonial days, our Judges were King's judges, many subservient to his will to the point of being unjust. So you observe it has taken generations and even centuries to develop out of *King's courts* the *People's courts* that now exist throughout these United States, presided over by judges chosen, directly or indirectly, by the people or their governors, with or without the advice and consent of their legislative chambers.

I have little to say as to which method of selection by President or Governor or by direct or indirect choice of the people, is the better. I shall refer to this subject briefly later on, but nothing that anyone can say can exceed the cogency and lucidity of the argument of Rufus Choate to which I have alluded.

II

To discuss and rightly appreciate the judicial office, we must know more definitely what are the essential characteristics of a judge.

Socrates had a four-fold analysis. He contended that a judge "Must hear courteously; Answer wisely; Consider orderly; Decide impartially."

Rufus Choate, in his analysis of the best judge, as a preliminary to deciding by what system most surely to find such a man, said:

"He must be profoundly learned in all the learning of the law and he must know how to use that learning. . . .

"He must be a man, not merely upright; not merely honest and well-intentioned—but a man who will not respect persons in judgment. He must possess the perfect confidence of the community."

Note, how eloquently he illustrates his analysis. As to learning, he says:

"In this age, boastful, glorious for its advancing popular, professional, scientific, and all education, will anyone disgrace himself by doubting the necessity of deep and continued studies and various and thorough attainments to the bench? He is to know not merely the law which you make, and the Legislature makes, not constitutional and statute law alone, but that other ampler, that boundless jurisprudence, the common-law, which the successive generations of the State have silently built up; that old code of freedom which we brought with us in the *Mayflower* and *Arabella*, but which in the progress of centuries we have ameliorated and enriched, and adapted wisely to the necessities of a busy, prosperous and wealthy community, —that he must know. And where to find it? In the volumes which you must count by hundreds, by thousands; filling libraries; exacting long labors; the labors of a life-time, abstracted from business, from politics, but assisted by taking part in an active judicial administration; such labors as produced the wisdom and won the fame of Parsons, and Marshall, Kent, and Story, and Holt, and Mansfield."

As to the integrity and impartiality he rose to greater heights:

"He shall not respect persons in judgment. He shall know nothing about the parties; everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If, on one side, is the executive power, and the legislature, and the people—the sources of his honors, the givers of his daily bread—and on the other hand an individual nameless and odious, his eye is to see neither, great nor small, attending only to the 'trepidations of the balance.' If a law passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual member nameless and odious on the other, and he believes it to be against the Constitution, he must so declare it, or there is no judge. If Athens comes there to demand that the cup of hemlock be put to the lips of the wisest of men; and he believes that he has not corrupted the youth or omitted to worship the gods of the city, nor introduced new divinities of his own, he must deliver him, although the thunder light on the unterrified brow."

As to trustworthiness, he uses the poetic utterances of the Book of Job, already referred to, which he summarizes in this homely paragraph:

"I do not fear that I subject myself to the ridicule of anyone, when I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; not a man perching for a winter and summer in our court-houses, and then gone forever; but one to whose benevolent face and bland, and dignified manners, and firm administration of the whole learning of the law, we become accustomed; whom our eyes anxiously, not in vain, explore when we enter the temple of justice; towards whom our attachment and trust grow even with the growth of his own eminent reputation."

Would that this estimate of the character essential to the judicial office could be brought home to the appreciation of everyone by whom candidates for judicial office are selected or elected. Thank God, in these United States, we have rarely had venal or corrupt judges unless we admit that there have been those who have been swayed by human prejudice, which David Dudley Field claimed was a form of corruptness. But we have had incompetent judges, unlearned judges, and in the sense that they were King's judges in England, we have had judges obedient to political control, forgetting not the pit from whence they were digged and capable of being influenced in such a way that they failed to comply with Mr. Choate's essential requirement quoted from the Book of Deuteronomy that they should be "no respecters of persons." When Richard Croker, Boss of Tammany Hall, turned down Joseph F. Daly for reelection, he explained that he had refused to appoint as a clerk in his court the man requested by Tammany Hall. He said, "Justice Daly was elected by Tammany Hall and *Tammany Hall had a right to expect consideration at his hands.*"

As Mr. Guthrie once said, "The philosophy of this remark . . . . is really the philosophy of the elective system."

You can, without my quoting them, examine for yourselves the estimate of judicial character and equipment set forth in the Canons of Judicial Ethics of the A. B. A.

So far I have, I believe, made no controversial statement, and have said nothing to arouse opposition. We must be in agreement as to what are the ideal qualifications for judicial office, and it is obvious that we have not attained, at least generally, to such ideal in our several Commonwealths and in our national judicial system.

Let me take one illustration alone. When we gather and chat at meetings such as this, while engaged in that pleasant social intercourse which ought always to accompany the meetings of Bar Associations, do we not hear from time to time of Federal Judges who are "King's judges," who are "for the government" from the beginning of the trial until the charge to the jury or the decision has been made. To their minds the government can do no wrong, nor enact an unjust law. The Administration is the source of their stipend and of their expected pension. They may be learned but they often use that learning as though they were counsel for the prosecution. They may be not consciously unfair, but they are moved by a prejudice which amounts in its operation to unfairness. I use this illustration because these men are selected by the method which I believe to be ideal, and which in fairness to those who take the opposing view, I cite as

proving that even the judgment of a Governor or a President, in spite of the means which he has to be informed as to the qualifications of men he is to appoint, may not always be correctly reached or relate to the real essentials of judicial qualifications.

What shall I say then of a judge who owes his office to the predominant suggestion of a political Boss to whom he has rendered faithful and arduous service in the organization in his locality, and to whom and to the Boss alike the office means only a political reward, a job at so much per annum for so many years.

Theoretically the selection and election of our judges by the people directly is ideal and is defensible on the most excellent foundation of reason. In rural communities, where everybody knows everybody else, where the membership in the Bar is small, the man who secures a nomination, for say, County Judge has been sized up by his neighbors; usually they have known him from a boy; they discount his weakness or idiosyncrasies. They think he will make a good judge and more than usually they are right. But it is in our congested great municipal centers that the political machines do their perfect work. In a population of a million or over, where lawyers number thousands, the community generally hasn't the faintest idea who the men are whose names appear in the column on the ballot of judicial nominees. Theoretically they are elected by the people. As a matter of fact they are always *selected* by the Boss. Once his decision has been reached, the Convention, if there be one, or the Primary, if it takes the place of a Convention, registers for the purposes of the votes of the members of that particular machine, the will and choice of the Boss. Any influence that could effect a change of opinion on his part must have been exerted *before he reached his decision*. Committees on judicial nominees of Bar Associations, commenting upon the qualifications of his candidates *after* they have been nominated, I venture to assert, never changed one vote. I have seen them published in local newspapers of high respectability but limited circulation, but the voters of the predominant party don't read that report. The members of those Committees who are usually equally of two parties, have, in very few instances, excoriated any of the individuals selected by the Boss. They use various degrees of "good" or "excellent" to describe them and the candidate prints on his lithographed paper or campaign posters "Endorsed by all Bar Associations." What is the use of enlarging upon this point? It is a fact of common knowledge and leads to the main contention of this address, namely, that the duty of the Bar in the selection of judicial candidates, is to exert its enlightened and collective influence *before* the political parties have actually nominated and the matter of selection becomes an accomplished fact.

From the little I have heard I understand that the Bar of this great City believe in exercising that influence in advance and at the determinative stage, to wit, the primary itself, and in letting the political parties know what men they consider worthy of the office and to be proper men from among whom the political party should make their selection. I look for great and valuable results from such activity.

The question thus arises, can the Bar as a practical matter exert a collective influence in this important particular? We heard at the Conference in Washington, last spring, that Ohio, by its State Bar Association, is once more in favor of an incorporated Bar, and aims to "get a little of the California spirit"—a cryptic utterance. Some of our most distinguished lawyers in the East do not believe that you could get a Bar composed of Democrats, Republicans, theoretical Socialists, Prohibitionists and what-not, to agree that even John Marshall was the ideal candidate to put forward for Chief Justice of the Court of Last Resort of a given State. They say that law firms will divide according to the individual politics of their members and that the Bar Association or Incorporated Bar will divide similarly. They point out that in many communities members of the Bar may owe their entire income to business received because of political services rendered. Shall the lawyer, they say, as a matter of professional ethics, bite the hand that feeds him?

This begs the whole question. The selection of a candidate for a judgeship is a matter in which the lawyer is best qualified amongst the entire electorate to reach a proper judgment and in which he should have a professional interest regardless of his duty to the courts, or of his duty to the community, and solely because of the other duty in this great trinity, namely, his duty to his client. About half of the determinations that are made by judges in our courts, are matters of discretion. Discretionary orders are rarely reviewable in courts of last resort.

I tried a case once before a judge of political configuration, against a corporation, the chief stockholder of which was a Senator and the power behind the throne in the political organization that had put the judge on the Bench. The judge and the Senator had jointly and severally the nerve to permit the Senator to sit by the Judge's side on the Bench while the trial was proceeding. I counted my client fortunate when I secured a mistrial.

Again, I went to another court room on a matter involving discretion and happened to see a certain political Boss go into the Judge's private room as I was on my way to the court room. The Judge did not come in for half an hour beyond the appointed time. My application was denied.

We have all had unhappy experiences of this sort. We know that many judges are moved by "human prejudice" and if there is anything more human than politics in these United States of America, I don't know what it is.

I belong, among other Bar affiliations, to a small Bar Association known as the Phi Delta Phi Association, which has the peculiar characteristic that it is composed of men who belonged to the Phi Delta Phi Fraternity in their law school course, and upon initiation, they took a solemn vow in respect to the ethical standards of the profession, including a specific promise to do all in their power to insure the selection of competent and impartial judges in the administration of justice.

When the debates in respect to the incorporation of the Bar (with a view to the exercise of collective influence by the profession in those affairs which relate to the administration of justice in every community) began in the New York State Bar Association, this little Association of 250 members undertook to examine and develop one phase of the problem that would confront such incorporated Bar, namely, what duty would devolve upon that collective Bar in respect to the selection of candidates for judicial office.

We deemed it the most important sub-topic of the general subject and we undertook a two-years' campaign at the end of which our treasury was depleted of any surplus because propaganda costs money.

We organized a public meeting in the Town Hall of New York City. It was addressed by some of the most distinguished lawyers in the country, from New

York, Illinois, New Jersey, including the President of the Chicago Bar Association; ex-Presidents of the City Bar Association; the President of the New York State Bar Association; the now President of the New Jersey State Bar Association; Mr. Martin Conboy and Colonel William Rand, of the New York Bar, and Dr. Katherine B. Davis, representing the women voters. It resulted in a resolution urging that the movement should not be allowed to die out, and urging our Association to convene a conference of Bar Associations in the neighborhood of New York City, with a view to defining and effectuating that influence which the legal profession as a body ought to take in the selection of candidates for judicial office, on the one hand, yet keeping the judiciary branch of our government out of politics, so far as is consistent with the proper functioning of our Republican form of government.

Such a conference was convened. Five delegates each from twelve different Associations came together and for months sub-committees were engaged in considering the various sub-divisions of this great topic. The result of our deliberations was filed with the conference of Bar Association delegates in Washington last Spring. Suffice it to say here that we reached three conclusions:

(a) That the appointive system is the ideal system for the selection of such officers;

(b) That where and as long as the elective system prevails, judicial elections should be had at a time separate from ordinary elections in order to focus the attention of the voters upon the candidates put forward for election;

(c) That it was desirable that by permissive legislation the Bar of a given locality, if and when incorporated, should be given the status of a political party and have the power if it were so advised in any given election, to nominate candidates whose names should go upon the official ballot. We were even successful in getting a permissive clause to that effect in the so-called Gibbs' Bill offered by the State Bar Association in the New York Legislature. You can imagine the reaction. It was bound to be a controversial point but the reactions, on the part of even distinguished lawyers to this feature of the Bill, were amusing. If they really wanted to beat the Bill, they ought to have left that clause in and simply called the attention of the political leaders to that clause in the Bill and the Bill would have been beaten on that ground alone, and why? Well, take New York City alone.

I pointed out at the Town Hall Meeting, to which I referred above, that the budget for maintaining 200 judges and their courts in New York City was $8,000,000 a year, not reckoning the cost of the offices of the Corporation Counsel, Sheriff, County Clerk, District Attorney, Court librarians, etc. I do not recall how many clerks, office attendants and stenographers these 200 judges are to appoint, and the Lord only knows how many receivers, special guardians, referees and appraisers, etc., will be designated by each judge during his term of office. Do you wonder that the leaders of the two great political parties in New York City gave serious consideration to the selection of candidates for judicial office and do you suppose they haven't got a pretty good idea of what the incumbency of a judgeship for fourteen years at $25,000 a year means in the way of patronage and fees to the faithful? Even conceding that the administration of that office is going to be conscientious, but also assuming that the incumbent is not going to throw down the organization in discretionary matters — $15,000,000 a year would be a modest estimate of what would in one way or another find its way into the pockets of the faithful as salaries or fees or allowances. The people don't realize or appreciate this. By the people I mean the electorate in New York City; and the influence of the Bar, collectively or semi-collectively, as at present exerted, does not amount to a hill of beans. Many opponents of the incorporation of the Bar say in this regard that the lawyer is above all a citizen, and as a citizen he should align himself with a political party and that it is within the councils of every party that he should exert his high and holy influence.

How long do you suppose he would remain in the Councils of the party exerting his "high and holy influence," if he used the arguments which a collective Bar would by very force of its own dignity and responsibility undertake to use in order to prevent the nomination of a friend of the Boss who had worked unrewarded for many years or who had run unsuccessfully as a "forlorn hope" in a given election to please the organization? There are practical difficulties, and many of them in securing any such reform in any State of the Union, but that does not lessen the fact that it is an ideal method in which the Bar ought to function to discharge its full responsibility. It ought to function collectively. It ought to function in advance of the *selections* by the Boss and it ought to be given by permissive, not mandatory, legislation, the right to effectuate its influence by going directly before the voters and on the official ballot at that.

I come back to the underlying factor, namely, the conception of the judicial office, and I have some special knowledge of the inadequacy of understanding in this respect even on the part of the judges themselves.

I was Chairman for several years of the Committee on Grievances and Professional Ethics in the American Bar Association. I persuaded the Executive Committee to give me an appropriation and I issued a questionnaire to 3500 judges of every kind and jurisdiction throughout the United States, Federal, State, last resort, local and inferior. I got a vast number of replies, which I analyzed and reported on to the Association, (See XLV Reports A. B. A. 1920, pp. 270-298), and I turned over to my successor as Chairman a chestful of these replies.

This was started as a basis for my contention that there should be canons of judicial ethics, or at least that the judges should be reminded that election to judicial office not only did not free them from their professional ethical restraints but, on the contrary, subjected them to additional and even higher obligation. We were all vaguely conscious at the time of the propriety of some such deliverance or formulation of a judicial code, but many equally vaguely thought there was something disrespectful to the judiciary in a mere lawyer attempting to formulate such rules for them.

It was a great delight when the Chief Justice of the United States,—when the Special Committee was finally appointed and framed a proposed set of canons of judicial ethics,—rendered such yeoman service in the work of that Committee.

The lamentable conditions that were disclosed by this questionnaire contributed, I think, to the success of that particular movement for canons of judicial ethics. Many of these judges had never heard of the Canons. They were like those Christians that St. Paul came upon, who had not so much as heard that there was a Holy Ghost. Others repudiated the duty of

applying them as standards of conduct, claiming that the rules of court were the only standards that they would apply, and if a lawyer kept out of jail they had no right to invade the prerogatives of his great office in the right to practice in and upon the community.

One judge, against whom I had secured a report of a State Bar Association, recommending his impeachment for conduct unbecoming a judge, and in his case conduct prohibited by the State law, signed the questionnaire and reported blandly that his district was absolutely pure and clear of any unethical conduct.

One Southwestern jurist wrote me ingenuously as to a disbarment case. "Accused promised to leave the State if Board would not disbar. However it has been learned that he merely moved to Wichita and is practicing there."

Another said "All cases of complaints against lawyers are taken care of privately by the judge."

An Iowa Judge suggested sneeringly that the first step in improving the standards would be that members of the Grievance Committee should themselves be beyond reproach.

Minnesota originated the valuable idea that legislative authority be given to Bar Associations in all matters of discipline, which is the basic ideal of an organized Bar.

The combined effect of the replies to this questionnaire were exceedingly discouraging. They revealed a general widespread condition of indifference in the judicial mind to "counsels of perfection" embodied in the canons of the American Bar Association; and I shall never forget the thrill of deep satisfaction that went through us when the Presiding Justice of the Appellate Division, in the First Department of the Supreme Court of the State of New York, specifically quoted, analysed and applied one of those canons in a disbarment case in the City of New York, giving judicial sanction to the standards which the Bar itself was willing to adopt as self-denying ordinance.

It is distressing also that those who have charge of the admission of our young men proposing to enter our profession, treat with such casual or indifferent attitude the question of indoctrinating these young men specifically in the standards of our profession and in ethical ideals. A few lectures by a few distinguished lawyers on the general subject still constitute the bulk of such instruction in the majority of our law schools. I have read many of these fugitive addresses. They are many of them indefinite, lack coherence and cannot vitally influence conduct. The lack of time in the schedule of study seems to be the principal plea in avoidance, while it is the very fundamental of professional character that one should know the traditions of his profession and should appreciate and understand its ideals, and should obligate himself to maintain them in his own professional life. For the very definition of the word profession implies public service.

To sum up, in my judgment we have not so much to dread from a venal or dishonest judge in our American courts as we have to fear the operation in the affairs of our clients, particularly in the first few years of office, of his incompetency, his lack of learning; and yet like our British cousins, we do "muddle through." I have a profound belief in the uplifting and steadying value of a responsibility once assumed. I recall that in the drafting of wills I have frequently urged that the testator should remember that his son will some day be a man and should not pretermit that son in his selection of an executor and should not tie him up by testamentary chains so as to embody in his will that distrust of his ability or fidelity by selecting Trust Companies or strangers to administer those trusts which, when the will comes to be probated, the young man would be eager and honored to assume.

Yet, I have seen again and again a man of little legal training, certainly possessing none of the special knowledge called for by the particular court over which he was elected to preside, striding in, on his first court day, decorated in the robe which his $1,500 a year political personal officer had draped over his shoulders and confronting his first court room and recognizing the faces of leaders of the Bar, prepared to submit to his arbitrament their contentions in law, or equity. You could almost see him straighten up, as it were, *jacked up by the very responsibility itself* into a new spirit of endeavor and obligation. In time he may make good; but at what a cost to the litigants before him as the result of his lack of preparation and equipment for that high office!

I care not, therefore, whether we live in the City or the country; whether the Justice's salary is $2,000 a year or $20,000, the Bar cannot shirk its responsibility in this most important respect.

Why should it not act collectively? Even in a great city the Bar may not know one another as they do in the country district, but they know the outstanding men; they know the men who are scholarly, who are thoroughly equipped, who have been trained in institutions whose diploma is a real certificate of intellectual attainment. Who better qualified to select such candidates? Even though they confine themselves to certifying a given number of men of each political party in advance of the conventions and directly, if you please, to the leaders of those parties, they will exert an influence that in time will become effective.

In New York, our outstanding leaders say a bar ticket would not have a ghost of a show. We would be beaten pitifully as were the Judiciary Nominators years ago. What of it? Suppose you were beaten for one or even ten years—your acts would produce one of two results; either you would constrain the party leaders to select better candidates—so as to demonstrate that your activity was unnecessary, or one of the two parties, probably the minority, would see its advantage in adopting your ticket and so rally to its support the intelligent voters of the community.

Either result would be all to the good, and either would serve as a test of the influence of the bar in a matter so vital to its own welfare as well as to that of the community.

To abandon the demand for this right to nominate is cowardly—even though based on the reason assigned that no legislature would pass a statute incorporating the bar with such a power conferred. Why take half a loaf when working towards an ideal? After the advocates of the Gibbs' Bill in New York emasculated it by cutting out the right to nominate judges, Louis Marshall had no difficulty in stampeding the County Lawyers Association to vote down the proposal to incorporate the bar, because of the futility of its objects which he claimed existing associations could achieve as they are.

To abandon so vital a feature of an efficient collective bar at the threshold does not augur well for

the courage which the bar would be expected to show in its future collective acts.

An incorporated bar, if ideally organized must:

I. *Be self-governing,* with power to prescribe standards of admission and with power to purge its own rolls of unworthy members.

II. It must have the purpose and the power to influence the methods by which procedure and substantive law are constantly changed by legislative meddling and muddling—so as to in time secure uniformity in all our courts as to rights and remedies.

III. It must have power to effectuate its great ethical objective of keeping the channels of justice pure by controlling effectively the selection of judges in all our courts.

I plead therefore, for the incorporation of the Bar, if that be the only way to secure its collective influence. I plead for the exertion of such collective influence in the matter of the selection of candidates for judicial office. If no other way can be found for the effectual exerting of such influence, I plead for permissive legislation authorizing the Bar to go into the political field, nominate its own ticket and go on the official ballot to all intents and purposes as though it were a political party. I believe the Cincinnati Bar to be on the right highroad to the exertion of its influence in this vital particular.

ARRANGEMENTS FOR BUFFALO MEETING

(To be held at Buffalo, N. Y., August 31 and Sept. 1 and 2)

Headquarters

Hotel Statler, Delaware Avenue and Mohawk Street. Rates: Single rooms, $4 to $6 per day; double rooms, $6 to $8 per day; double rooms with twin beds, $6.50 to $12 per day; double room with double and extra bed (for two or three persons), $7 to $8.50 per day; parlor suites, $15 per day up. All rooms have tub and shower bath and outside location.

Reservations and Hotel Information

Requests for reservations and information concerning the Statler and other Buffalo hotels should be addressed to the secretary, William P. MacCracken, Jr., 209 South La Salle Street, Chicago, Ill.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating (1) whether double or single room is wanted and if double the names of persons who will occupy it; (2) whether double or twin beds are preferred; (3) the approximate rate; (4) date of arrival, including definite information as to whether such arrival will be in the morning or evening; (5) whether upper or lower floor is preferred.

Every effort will be made to comply with requests made, as far as available accommodations will permit. Reservations should be made as early as possible.

Reduced Rates for Buffalo Meeting

Summer tourist rates to Buffalo and Niagara Falls will be available to members in certain parts of the country. In those parts where tourist rates are not available, arrangements will be made for securing the usual reduction of 25 per cent on the identification certificate plan, concerning which announcements will appear in subsequent issues of the Journal.

Annual Meeting of Commissioners on Uniform State Laws

The National Conference of Commissioners on Uniform State Laws will hold its next annual meeting at Buffalo, New York, August 23-29, 1927.

The Headquarters of the Conference will be at the Statler Hotel, and all meetings will be held there.

Requests for hotel reservations should be addressed to William P. MacCracken, Jr., Secretary of the American Bar Association, 209 S. La Salle Street, Chicago, Ill., and reference is made to announcement concerning hotel accommodations which appears in this issue of the Journal.

The following subjects have been tentatively assigned for discussion in the following order:

Real Property Mortgage Act; Public Utilities Act; Incorporation Act; Sale of Securities Act; Trust Receipts Act; Negotiable Instruments Act Amendments; Cooperative Marketing Act; Mechanic's Lien Act; Act for Securing Compulsory Attendance of Non-resident Witnesses.

GEORGE G. BOGERT,
Secretary.

Additional Hotel Accommodations

Hotel	Dist. from Hdq.	With Bath			Without Bath		
		Single	Double	Twin Beds	Single	Double	Suites
Buffalo	5 blocks	$2.50 to $4.50	$4.50 to $6.50	$6.50	.....	$5.00 up	
Lafayette	5 blocks	3.50 to 4.00	5.00 to 6.00	7.00 to $7.50	.....	....	$15.00 up
Broezel	10 blocks	3.00 to 5.00	.....	.....	$2.50 to $4.00	$5.00	
Lenox	11 blocks	4.00 to 6.00	.....	$7.00	2.50	4.00	2 bedrooms
Y. M. C. A. Men's Hotel	1 block	1.00 to 1.50	.....	.....	.....		& 1 bath $7
Touraine	4 blocks	2.50 to 3.00	$5.00 to $6.00	.....	.....	....	$12.00 up
Cheltenham	1½ blocks	2.50	4.00	.....	$1.50	2.50	
Graystone	4 blocks	3.50	4.50	$5.00	.....	....	
Ford	2 blocks	1.50 to 2.50	2.50 to 3.50	.....	.....	....	
Stuyvesant	12 blocks	Furnished apartment $5.00 per day for 2 persons; $8.50 per day for four persons					
Buffalo Athletic Club	1 block	A limited number of rooms for men are available at $4.50 per day.					

BAR WELCOMES HISTORIAN OF ENGLISH LAW

Chicago Bar Association Gives Banquet in Honor of William Searle Holdsworth, Vinerian Professor of Law at Oxford University—Dean John H. Wigmore Introduces Guest, Who Tells Something of the Chair Which He Occupies and of Blackstone, Its First Occupant

THE Chicago Bar Association enjoyed the privilege of being the first of the Bar organizations of the country to extend a welcome to William Searle Holdsworth, Vinerian Professor of Law at Oxford University, England, and author of the "History of English Law," which is already accepted on both sides of the water as a work destined to insure enduring fame to its author. Prof. Holdsworth came to Chicago to deliver a series of three lectures at Northwestern University at the invitation of Dean John H. Wigmore of the Law School of that institution, and the local Bar Association seized the opportunity to give a dinner in his honor at its club rooms. The distinguished guest was greeted by a large and representative gathering of the Illinois Bar, and the occasion was in all respects a notable one. The Glee Club of the Association sang a number of parodies especially composed for the occasion—among them "When Bill was a lad he served a term," reminiscent of "Pinafore," and "Who takes the seat of Vinerian Professors, when Vinerian Professors are elsewhere," modeled on the classic lines of the song, "Who takes care of the caretaker's daughter?" President Boyden called the assembly to order and introduced Dean Wigmore, who in turn introduced Professor Holdsworth. Following is a transcript of their remarks:

President Boyden's Welcome

PRESIDENT BOYDEN: Professor Holdsworth, ladies and gentlemen, members of the Chicago Bar Association:

Our Association is the recipient tonight of one of the greatest honors in its history. Two days ago England's greatest legal scholar and historian landed in New York, and came straight to Chicago, as the guest of the Northwestern University Law School.

Through the courtesy and consideration of Dean Wigmore, we are privileged to be the first Bar Association in America to entertain him. Through the heroic efforts of the Glee Club, you have perhaps gleaned that he is Vinerian Professor of Law at Oxford.

In 1758 Sir William Blackstone was the first Vinerian Professor. And as Blackstone became immortal to all students of the Common Law, through his great Commentaries, so it is freely predicted by scholars on both sides of the Atlantic that our guest has achieved as certain immortality through his History of English Law. (Applause.)

A scholar of such distinction should be introduced to you by a great scholar. Fortunately we have in our membership a legal scholar of international reputation, who is the author of one of the most learned works on the law ever produced by the brains and industry of man.

I was delighted to read in the preface to the ninth volume of the History of English Law, the author's acknowledgment of his indebtedness to what he describes as Wigmore's great Treatise on Evidence. This Association is proud of that work and proud of its author, and we are keenly aware of our indebtedness to him for his warm cooperation in the work of the Association, over many years, and for the distinction that is ours, that he is one of us.

I have great pleasure in presenting to you your friend, Dean Wigmore, who will present to you the guest of Honor. (Applause.)

Mr. Wigmore's Introduction

DEAN JOHN H. WIGMORE: Mr. President, Dr. Holdsworth, guests and brothers of the Bar Association:

I think that the shade of Sir William Blackstone must at this moment be looking down upon this occasion in a beatitude. You know, Edwin Burke said in a speech, I think shortly after the Revolution, that more copies of the Commentaries were already sold in the Colonies than in England itself. And certain it is that that book was the greatest influence that saved America for the Common Law. Why, Sir, I do not know whether you are aware of it or not, but the Custom of Paris was once the law on the spot where we are now sitting, and for a thousand miles south and west of here. And I think, therefore, we may believe that the shade of Sir William Blackstone, the first Vinerian Professor, is watching with gratification this latest Vinerian Professor visiting in person that vast area that was conquered by that book.

Now, speaking of books, I notice that in the announcement of this evening's banquet, the Committee referred to the nine-volume work on the History of English Law as a monumental work. That term has been occasionally used by reviewers in application to my modest five volumes. And I think that Dr. Holdsworth will join with me in pointing out that an author has some susceptibilities in finding his work referred to as monumental. It savors too much of the graveyard and the burying ground. (Laughter.) I wish that future committees of the Bar Association and future reviewers could select some word having an equally pretentious import, but without those associations, like a favorite word of Old Dominie Sampson in Scott's novel, the word "prodigious," or even "monstrous." (Laughter.)

I am inclined to believe that one reason why our guest this evening was able to produce this *monstrous* work, nine volumes, covering nine centuries of law, in twenty years—so short a time, so monstrous a labor—I am inclined to think that one reason why he was able to do it thoroughly is because he is a member of the faculty, as we say, in All Souls College, one of

twenty-seven lecturers in a college that has no students. (Laughter.)

I have heard a colleague remark that life in a university would be ideal if it was not for the nuisance of the students.

But after this twenty years of laborious toil and of monstrous work, it was natural that he should wish for a vacation in other climes, free from the clamor of local duties, and his toil of proofreading, and that beneficent thought was really, I think, in our minds when we extended to him the invitation to come over here and have a good time in that new area conquered by his predecessor's book. And we are very proud, Sir, that Chicago is to be and is the first place that you have honored with your visit.

From here our learned guest goes to the effete East. He visits select Boston, purse-proud New York, cynical Washington, and corrupt Philadelphia. (Laughter.)

But I know, Sir, that you may meet greater numbers of the Bar, but not larger hearts. I dare say you may see taller buildings, but you will not find higher aspirations. They may introduce to you a more profound luxury, but not to a more abundant comfort. Doubtless you will go to places where there is an older past, but not where there is a more solid present or future. And I think that maybe you will find a more formal dignity in some place, but not a more cheery fraternity than we have tried to offer you here tonight.

And finally, however much flattering homage they may pay you, we insist that we yield to none in our profound admiration for you—and for ourselves! (Applause.)

And now, Sir, I am sure that our brethren at the Bar here are anxious to hear from you.

Prof. Holdsworth's Remarks

PROFESSOR HOLDSWORTH: Mr. President, Dean Wigmore, ladies and gentlemen, and fellow lawyers:

I am sure that Dean Wigmore spoke the truth when he said that however far I might travel in this country, I could not meet with any body of lawyers with larger hearts. I am sure that both my wife and myself are very much touched and gratified by the magnificent reception which we have received at our first visit to this country.

I have had the honor of teaching a great many members of your country, who have come to Oxford as Rhodes scholars. I have occasionally contributed something to your law journals, and I have always wished to come over and see your famous law schools, on the spot; and owing to the kindness of Northwestern University and Dean Wigmore, that great wish which I have had for a great many years, has been gratified.

I am afraid that this monstrous History, which I think you have heard perhaps enough about, was not written quite under the easy conditions which Dean Wigmore described to you, because it was all written when I was a member of the undergraduate college, and had to teach a great many undergraduates. So that little bit of historical reminiscence, I am afraid, will not work. (Laughter.) Still, that is a mere vulgar fact. You may disregard it if you wish.

I do not propose to say much about myself, because I observe that "When Bill was a Lad"—(Laughter.) really I cannot but admire—I do not know how it was done—the insight with which that song has really sketched the salient features in my career. It is quite true that I did serve a term in my father's firm. He was a solicitor, and I was in his office for a whole year. So that first item is true.

Then in the third verse there is something about "an ordinary youth grow thin." My wife has always maintained that I was very thin when she married me, and she is responsible for the present condition. (Laughter.) So that really another bit of insight is shown in the composition of that song, although I cannot think how it was done.

I thought perhaps in addressing you you might like to hear a little bit about the Chair which I occupy, but do not claim to fill, and perhaps also a little bit about Blackstone, who was certainly its most famous occupant.

The Vinerian Professorship

With regard to the Chair, that had a magnificent send-off when Blackstone was made Vinerian Professor, but I am afraid that, like many other things in the Eighteenth Century, the glory has rather decayed, and I am also afraid that the intermediate history is not something that you might be altogether proud of.

I see here again this point is anticipated in this song. I cannot sufficiently admire the insight with which it is drawn up, in the song entitled, "Who Takes the Seat?" It inquires as to what happens when Vinerian Professors are away. One of my predecessors in that Chair, who occupied it for a little time after Blackstone's death, was Vinerian Professor of English Law at Oxford, and at the same time had charge of the High Court of Calcutta. It is a little difficult to combine those two functions, and so he appointed a deputy. The deputy appointed was John Scott, afterwards Lord Eldon. You know he was a very efficient deputy. Young John Scott at that time had only just started reading law, and he had just met and run away with his wife and made a Gretna Green marriage—that was how John Scott started in life; and it was said that he chose as the subject of one of his lectures, a statute of Edward the Fourth, concerning young men who run away with maidens.

That supplies some sort of an answer to the inquiry.

Then again, there was another Vinerian Professor early in the Nineteenth Century, who always put on his lectures at 1 o'clock, about lunch time. Very often he attained his object, and no one came. If one or two came, he would say to them, "Gentlemen, I think 1 o'clock is more like lunch than lectures. The buttery is just over the way; suppose we go and have lunch."

So I am afraid that the composer of this paper was not quite accurate when he said that every one of my predecessors edited a book of legal lore; but later that was changed as the result of the University Commission in 1870; and the first Professor under the new régime was A. V. Dicey, who I think you will all agree, was a very worthy successor of Blackstone. The first Professor under the old régime and the first Professor under the new régime have made the Chair so famous that anybody who is called upon to occupy it necessarily seems very small.

So much for the Vinerian Chair.

Blackstone, the Inaugurator of Modern System of Legal Education

Now, with regard to Blackstone; of course, Blackstone must always be a great name to anyone who, like myself and like Dean Wigmore, has devoted his life to the cause of legal education, because after all,

it was Blackstone who really inaugurated the modern system of legal education. He was the first University Professor of English Law, and he was the first person who announced the novel view that English law should be taught at a university; and I think in his inaugural lecture he sketched a plan of legal education very much in the form in which it has developed since his time.

Then of course Blackstone was always very interesting to you for the reason which Dean Wigmore gave, and in which I entirely agree with Dean Wigmore—that it is largely due to his book, that we have not only a common language, but common legal principles.

The instant question, I think, is, why were the Commentaries at once accepted as a classical book? I think there were very many reasons. Of course, Blackstone was a literary artist in his way. He was a man of very wide reading. He was not merely an English lawyer. If you look at the references cited, you will see that he was learned in Roman Law; in fact, he was very nearly appointed Regius Professor of Roman Law, and of course, if that catastrophe had happened, there would have been no Commentaries. That catastrophe was averted, because the Duke of Newcastle, in whose hands the appointment lay, and who was the prince of brokers, was thinking of his political patronage.

Blackstone was not quite clear as to whether he would support the Duke of Newcastle's measures, so the Chair went to a man who was described as the best electioneering agent in the University, but who knew no law to speak of.

That was a happy accident, but it shows that Blackstone knew a great deal of Roman Law. If you look at the references he cites, you will find that he knew a great deal of English History and of Political Science.

So I think one reason why the Commentaries are a classical book, is that he was not merely an English lawyer, but he was a man of letters; he was a historian. He was a man of very wide intellectual outlook.

But I think there is another reason, which I do not think has been so much dwelt upon, in the many biographies which have been written of Blackstone, and that is this, that his Commentaries were founded upon lectures which he had been giving for twelve years before the Commentaries were published. He began to lecture on English Law in 1753, simply as a private lecturer, and when he was appointed Professor in 1758, he in substance repeated the same lectures; so that for twelve years he had been going on lecturing on this subject.

Why the "Commentaries" at Once Became a Classic

I think that anybody who has ever lectured on law knows that there is nothing like lecturing from manuscript in order to show up its deficiencies. You go on lecturing from it, explaining it and putting it in other words—and it is my experience that you find all kinds of inaccuracies. You see ways of putting it better. And it was because of the lectures being submitted to that sort of a revision for the whole twelve years that the Commentaries were at once accepted as a classical book.

Now, what were those lectures like? Nobody, I think, has ever given much attention to that particular subject. I looked around to see whether I could find out anything about those lectures. As a matter of fact, I found no less than three manuscripts on them, evidently taken down by his hearers. One of them was a manuscript by a Fellow of All Souls, who must have attended the lectures in 1753. Another, which is in All Souls library, is a book of thirty-five small folio volumes, evidently taken down in shorthand, and carefully copied out; and then there is another one in the library which is claimed to be an original manuscript of Blackstone; but I am afraid that is not true. The handwriting does not quite bear it out, and it is quite obvious that it is a set of notes taken down in longhand, not nearly so detailed as the others, and it is not always very intelligible.

It is very interesting to see what those lectures were like, and on the whole if one looks at the best manuscripts, one can see that the Commentaries, though considerably extended, really follow those lecture notes very faithfully.

Of course, there are small differences, but they follow the lectures very faithfully; and therefore I think I am justified in saying that it is the fact that the Commentaries really were these notes, from which he had been lecturing over those twelve years, that accounts for the excellence of the book.

Bentham's Criticism of Blackstone

The book was, of course, as you know, at once accepted as a classical book. It went through a phase of detraction, because Bentham attended Blackstone's lectures, and as he at once saw what he termed fallacies, a few years later he gave expression to his views in his publications. I do not think it would be altogether a difficult task to defend Blackstone from some of Bentham's criticisms. He accused Blackstone of being an apologist for all the abuses of the time, in fact. That really was not true. If you look at the Commentaries you will find that Blackstone, although he occasionally defends indefensible things, does in a great many cases recommend improvements in the law. He was in favor, for instance, of a system of registration of conveyances. He criticized the law of inheritance. He criticized the doctrine of the corruption of blood in cases of felony. You can pick out lots of cases in which he did criticize the rules of English law; and it was not proved, as Bentham said, that he was an apologist for all the abuses of the law.

In fact, he, like Burke, was not averse to reasonable reforms, that did not upset established principles.

Of course, what Bentham really was thinking of—and there I think he made a great mistake—he was really confusing Blackstone with Tories of the type of Eldon and Ellenborough. Blackstone wrote before the French Revolution, and Tories like Eldon and Ellenborough did resist reforms. It was a very reactionary period, and Blackstone was not of that school, and evidently Bentham made a mistake, because he confused the two ages. Of course, he criticized him because he was unsound, perhaps, on the question of sovereignty, and he criticized him because he apparently had never heard of the principle of Utility.

I think that Blackstone, who was concerned rather to give a picture of English Law rather than to criticize it, could not help giving weight to a great many other considerations than the consideration of utility, because English Law is based on all kinds of different considerations, and therefore shows that it is always possessed of a larger knowledge of human nature than Benthm ever came in sight of.

Still, those are things of the past, and we can take

a more impartial view of the merits of Blackstone, and I think we may say that Blackstone is now coming into his own again.

I do not think anybody now would be found to denounce him as Bentham denounced him, as an apologist for all things established, but rather I think we should all agree in admiring a man who was a literary artist, who was an accomplished historian, and who was a learned lawyer. I think we should all agree that he used all these great gifts to weave into a harmonious texture the fabric of English Law of the old régime, which is after all the foundation of our Anglo-American law.

I cannot express really the gratification for the honor which you have done me in receiving me in this way, and I can only say that it has surpassed anything I ever expected, when I came to this country. (Prolonged applause.)

PRESIDENT BOYDEN: It only remains for me to express what is in all your hearts, your gratitude to Dr. Holdsworth for his charming, delightful and learned address, and to wish Dr. Holdsworth and Mrs. Holdsworth a delightful voyage and Godspeed.

DEPARTMENT OF CURRENT LEGISLATION

Democratic Control of Administration

BY JOSEPH P. CHAMBERLAIN

THE share taken in Legislation by organized groups has been noted in a former installment of these notes[1] but the influence of such groups is no less marked in administration. Well known are the use of the Societies for the Prevention of Cruelty to Animals as a semi-official organization for the administration of humane laws,[2] of the Society for the Prevention of Cruelty to Children, or orphanages and homes of various sorts, to aid the State in caring for children and young people, especially when they come under the jurisdiction of the Juvenile Court. Less understood but wide-spread is the cooperation of business and social organizations with police and prosecuting attorneys in the enforcement of the penal law. Associations of bankers, of fire insurance companies, of silk and fur merchants, of other business lines employ counsel and detectives to aid in the capture and conviction of criminals preying upon the members of their organizations.

Another way in which organized groups are a factor in government is through consultations with administrative boards and officers preparing regulations or orders. Frequently legislatures lay down standards of conduct in very broad language and put upon the executive the duty of carrying them out by making the rules which apply the standard to particular situations. It is these rules which constitute the law for practical purposes, as it is according to their precepts that individuals must direct their actions, the statute itself serving only as a scale for the courts by which to measure whether the rule in a particular instance is within the delegated power and therefore must be obeyed.

Evidently the group of persons making the rules must have knowledge of the subject to be regulated if the rules are to be effective and at the same time not unduly hamper the business or profession regulated. The administrative board which is to apply the law will do its work the better the more intelligently it attacks its problems and here again knowledge of the subject matter is imperative. The legislatures have naturally turned to the appropriate trades or professions in each case for members of the regulating and administrative boards to supply the technical knowledge required. Normally this end is accomplished by requiring that a certain number, in some cases all of the board, be engaged in the trade or business, or practice the profession concerned. Association of employers and employees in the rule-making board of State Labor departments is a case in point. Not only is this association important as bringing to bear on the rule-making body the knowledge and opinions of the persons to be regulated, but it serves as an important means of education of both groups in the meaning of the law and the objects of regulation.[3]

Furthermore a tendency has appeared to associate closely the organized group in the trade, business or profession regulated, in the work of administration.

The legislatures are requiring that the appointment be made from a list submitted to the appointing authority by the organized group. Consequently, the appointment is further removed from the influence of politics and the organized group made responsible to a degree for the way in which the statute is applied.

The movement for an autonomous bar presents the most complete instance of State adoption of a professional organized group for administrative purposes. New Mexico by Chapter 100 of 1925 gives to a board of nine elected by the State Bar Association the power to fix qualifications for admission to the Bar and to discipline attorneys, although subject to review by the Supreme Court. Idaho Chapter 211 of 1923 gives the same powers to a Board elected by the State Bar, whose expenses are paid from license fees authorized in the act. Not only is a public regulatory function vested in a board which the Governor has no power to appoint or remove, but it is given a permanent budget from the receipts of a license tax. North Dakota makes a change in form but not in principle

1. The Railway Labor Act, American Bar Association Journal, Vol. XII, 9, page 633.

2. New Jersey, Chapter 1987, 1926, allows recovery of penalty for act of cruelty to animals in action for debt in the name of the Society for Prevention of Cruelty to Animals.

3. Chapter 464, Laws of 1924, New York, sets up an Industrial Council of 5 representatives of the employers and 5 of the employees chosen by the Governor.

by Chapter 134 of 1923, under which the Supreme Court appoints a Board which examines for admission and controls the Bar, each from a list of those submitted by the Bar Association. The principle of control of a profession created and enforced by the public authority but executed by a board chosen by and from the profession was extended to the pharmacists by South Carolina No. 28 of 1923, which provides that:

"The Pharmaceutical Association of the State of South Carolina shall elect six pharmacists doing business within this State who shall be commissioned by the Governor, who shall constitute the Board of Pharmaceutical Examiners of the State of South Carolina."

In very few cases do the laws go so far in divesting the political power of the right to appoint administrative boards, but it is not uncommon for the statute to direct the Governor to appoint from a list submitted by an organization, which consequently has representation on, and a degree of responsibility for, the board. A notable case is the Boston Board of Zoning, a department created by Chapter 488 of the Laws of 1924 in conservative Massachusetts. In addition to ex officio members, the Board must contain eleven members, each representing a different organization and chosen from two candidates named by the organization. The make-up of this list of organizations is interesting. They are Associated Industries of Massachusetts, Boston Central Labor Union, Boston Chamber of Commerce, Boston Real Estate Exchange, Massachusetts Real Estate Exchange, Boston Society of Architects, Boston Society of Landscape Architects, Boston Society of Civil Engineers, Master Builders' Association of Boston, Team Owners' Association and the United Improvement Association.

Mississippi applies the principle to the membership of the Live Stock Board by Chapter 265 of 1926. The Governor must appoint one live stock man from a list of nine submitted by the Live Stock Association, and one veterinarian from a list of three submitted by the Veterinarians' Association. In the Northwest the same theory moved the Idaho solons. In the make-up of the Board of Forestry, created by Chapter 150 of the Laws of 1925, they included four citizens to be appointed by the Governor:

"one from and upon the recommendation of the timber protective association of North Idaho; one from and upon the recommendation of the timber protective association of South Idaho; one from and upon the joint recommendation of the Idaho Wool Growers Association and the Idaho Cattle and Horse Growers Association."

Turning to the professions, Louisiana by Act No. 193 of the Laws of 1918 requires the Governor to appoint each member of the Board of Optometrists from a list of five submitted by the State Association of Optometrists, and in 1926 indicated approval of the way the rule had worked out in practice by No. 4, which directed the Governor to fill vacancies on the Nurses' Board of Examiners from names of graduate registered nurses having had five years' practice in the State whose names are submitted to him by the Nurses' Association. The law requires that there should be two physicians on the Board, but it does obeisance to the principle of gild control by requiring the appointments of each physician to be made by the Governor from the names of two qualified persons furnished by the Nurses' Association.

In New England the same principle was endorsed by Connecticut in 1925, Chapter 95 of the Session Laws of that year requires the Governor to appoint each Dental Commissioner from a list of ten submitted by the Board of Censors of the Dental Association. The Nutmeg State takes a different tack with the optometrists. Chapter 94 makes it a condition to membership on the Board of Examiners in Optometry that the member be an optometrist, but it does not require the Governor to appoint from a list submitted by the professional association. The association may submit a list for his choice, but he is left free to appoint from that list or otherwise as he sees fit. New Jersey, Chapter 188 Laws of 1926, decided to begin interesting organizations at the beginning. The legislature provided for a commission to investigate the problem of crippled children and directed the Governor to appoint as commissioners on the recommendation of the respective organizations, a representative from the Elks, Rotarians, Shriners and Kiwanis.

The principle has recommended itself to Congress. In providing a Dental Board for the District of Columbia in 1924,[4] Congress required that each appointment be made from a list of "three to seven eligibles submitted by the dental societies of the District." The five members of the Board of Optometry must also be appointed from a list of ten submitted by the Optometry Society.[5] Appointments are made in both of these cases by the Commissioners of the District, but the President himself must cooperate with organizations in making appointments under the Railway Labor Board provision of the Esch-Cummins Act.[6] The Board had nine members, three of whom were appointed "from not less than six nominees" of the carriers, three from six nominees of the employees, and the remaining three representing the public are appointed without restriction.

The requirement that appointments be made from lists submitted by organizations is a serious limitation on the appointing power of the Executive. It has been challenged so far as the power of the President under the Federal Constitution is concerned by Attorney-General Sargeant in his letter advising the veto of the Surplus Control Bill, better known as the McNary-Haugen Bill.[7] The cornerstone of the plan for farm relief was the Federal Farm Board, the independent administrative agency which was to carry out the very delicate duties imposed upon the Executive by the bill. That Board was a notable instance of the application of the principle of cooperation of organizations with the Government. Members of the Board were to be appointed by the President with the consent of the Senate from lists of eligibles submitted by farm organizations and cooperative associations. The model of the Civil Service Act was followed in requiring that lists of three be submitted for each appointment, so that the President was given a choice. Furthermore, the bill does not require him to select his nominee from the first list offered. Presumably he could refuse to appoint from it and require the organization to submit another list. That Congress deliberately accepted this method of appointments is evidenced by the report of the Senate Committee on Agriculture.[8] It is plain that the intention in this bill, as in the case of the Railway Labor Board, was to assure the close cooperation of the organized groups concerned in the administration of the law, and furthermore to guaran-

4. 43 Statutes at Large, page 599
5. 43 Statutes at Large, page 178.
6. 41 Statutes at Large, page 470. See dissent. opin. by Brandeis, J., in Myers vs. U. S., 47 Supreme Court Reporter 21 at 75 October 25, 1926. Repealed by Railway Labor Act.
7. New York Times, February 26, 1927.
8. 69th Congress, 2nd Session, Senate Report 1304.

tee to them that their point of view would be considered.

The Attorney-General thinks that the limitation on the President's power of apppointment is unconstitutional. The Constitution "contemplates that his appointments shall be made by and with the consent of the Senate and not by or with the consent of any other person or official." The Constitution "not only confers upon the President a power but confers upon him a duty to exercise a judgment in the selection of appointments of higher officers." Consequently, under his reasoning Congress cannot follow a custom of long standing in the State governments of trying to assure the qualifications of members of administrative boards and the cooperation of organized groups in the administration, by putting upon such groups the duty of nominating lists for selection. The Attorney-General cites the Myers Case[9] as authority for his position.

The decision in that case was that the power of removal was implied in the constitutional grant of power to the President to appoint, that the appointing power was limited by the condition that the Senate consent, but the power of removal was not so limited, so that the intention of the Fathers was that the President should have a free hand in this respect. The Chief Justice, writing the opinion, discusses at length the necessity for considering the power to appoint and remove as part and parcel of the executive power vested in the President. He says, "that Article 2 grants to the President the executive power of the Government, i. e., the general administrative control of those executing the laws, including the power of appointment and removal of executive officers—a conclusion confirmed by his obligation to take care that the laws be faithfully executed; that Article 2 excludes the exercise of legislative power by Congress to provide for appointments and removals, except only as granted therein to Congress in the matter of inferior offices."

It is evidently on the opinion and not on the decision, which had to do with removal, that the Attorney-General bases his development of the constitutional theory of the Executive power of appointment. Even if he is correct and Congress may not authorize a non-official body to submit lists to the President for his choice, it may, nevertheless, prescribe qualifications for office.[10] In the case of the Labor Board, it might have required that labor members be connected with labor organizations, that manager members be officers of railroads; it might even allow the organized groups to make suggestions, as in the case of the Connecticut optometrists.

The dentists and optometrists in the District of Columbia need not be disturbed about their share in the appointment of members of the governing boards of their guilds. Members on these boards are inferior officers and are apppointed by the Commissioners of the District.[11] In view of the very wide acceptance of the principle of allowing professional groups to suggest appointments or to nominate lists for appointments it would seem very unlikely that the court will not consider this procedure within the power of Congress to regulate appointments to inferior offices. If this construction is valid then Congress might achieve its purpose of associating the farm organizations with the administration of legislation by making the Farm Board subordinate to the Secretary of Agriculture and giving him the power of appointment limited as described in the bill.

The wide field for the application for the principle of cooperation is in the States and here the opinion of the Attorney-General, even if correct as concerns the National Government, will not limit its spread. The States have not adopted the political theory which makes the appointment of officials part of the Executive function, essential, according to the Chief Justice, to carry out the duty of the President "that the laws be faithfully executed."[12] With few exceptions State constitutions either expressly, or as expounded by the courts, give to the legislature the right to determine by whom and how the State officers should be appointed, with the exception of the constitutional officers.[13] Where the matter has come up in the State courts it has been decided by the great weight of authority that the power of appointment is not necessarily an executive function.[14] The right of the legislature to vest the appointment of State officers in an unofficial body has been frequently sustained.[15] If the legislatures can directly authorize an unofficial group to appoint it would require much less straining of its powers to authorize the appointment by an official from a list nominated by an organization.

The custom of securing cooperation in administration either through direct appointment, or suggestion of lists, by unofficial bodies is of long standing in this country.[16] With the rise of organized groups, particularly in the professional and business field, it is reasonable to expect its wide extension. The argument for the extreme application of the principle is well given in Overshiner v. the State,[17] an Indiana case, in which the court had before it the statute granting to the State Dental Association the power to appoint directly the majority of the Board of Dental Examiners. The court sustained this method of appointment as constitutional under a provision that officers whose appointments are not otherwise provided for shall be chosen as "prescribed by law," and sustained the reasonableness of the choice of the legislature. The court said:

"The corporation is composed of practicing dentists, organized for the promotion of scientific knowledge and skill in the practice of the profession of dentistry, and which association thus stands in an intimate and well informed relation to the subject, and possessed of a peculiar interest in the successful administration of the law. It is difficult to conceive of an appointing power with higher qualifications, or likely to be swayed by more laudable motives, and that it is an organization of persons mutually interested in the enforcement and proper administration of the law surely furnishes no reason for its condemnation."

9. Myers vs. U. S., supra.
10. State vs. Daniel, 87 Florida 270, page 285. See dissenting opinion of Justice Brandeis, Myers vs. U. S., page 75-8.
11. U. S. vs. Perkins, 116 U. S. 483.
12. Myers vs. U. S., supra.
13. Index-Digest of State Constitutions prepared by the Legislative Drafting Research Fund, pp. 1127-30, 1185-86, 706-709, 884-885. For provision concerning removal, pp. 1177-1183.
14. Fox v. McDonald, 101 Ala. 51; 21 LRA 529; 46 Am. State Reports 98; State v. Boucher, 3 N. D. 389; 21 L. R. A. 539; Richardson v. Young, 122 Tenn. 471; Sartin v. Snell, 87 Kansas 485; State v. Bowden, 92 S. C. 303; 12 Corpus Juris, 836; 27 Cyc. 1368; 8 Cyc. 828, 857; American Digest, Century Edition, sections 86, 78, 137, 140, Dec. Ed. 58, 76.
15. Throop, Public Officers, §85; People v. Freeman, (Cal.) 13 Am. State Reports 122, Note; Ex parte Gerino, 143 Cal. 414; Overshiner v. State, 156 Ind. 187; Sartin v. Snell, 87 Kan. 485, which included a list of instances in which power was given to unofficial bodies to appoint officers; Sturgis v. Spofford, 45 N. Y. 446. *Contra*—State v. Washburn, 167 Missouri 680; Sibert v. Garrett, 197 Ky. 17, with a strong dissent.
16. Sartin v. Snell, supra; Sturgis v. Spofford, supra; Elliott v. McCrea, 23 Idaho 534; Riggin v. Lankford, 134 Md. 146.
17. 156 Indiana 187.

REVIEW OF RECENT SUPREME COURT DECISIONS

Fraudulent Inducements in Naval Oil Leases and Contracts — No Judicial Review Obtainable, Either by Congressional Provision or Under General Power of Court of Equity, of Final Order of Interstate Commerce Commission Merely Fixing Value of Railroad Property—Neither Theatre nor Ticket Broker's Business Affected with a Public Interest Justifying Legislative Price Regulation — Determination of Value for Reasonable Return

By Edgar Bronson Tolman

Contracts,—Fraudulent Inducement—Rescission

Contracts for the extraction of oil from lands reserved for the navy executed by a government officer, corruptly induced, may be annulled though the inducement may not have constituted the technical offense of bribery and although the government may not have suffered financial loss thereby.

In such case the government may recover the value of oil extracted and all profits realized on sale of such oil without credit or deduction for the cost of reservoirs and other improvements constructed in accordance with the contract, the same being contrary to the fixed policy of the government and unauthorized by Congress.

Pan American Petroleum and Transport Co. et al. v. United States. Adv. Op. 482; Sup. Ct. Rep. v. 47, p. 416.

This was a suit brought by the United States in the District Court to cancel two contracts, one of April 25 and the other of December 11, 1922, and also two leases of lands in Naval Petroleum Reserve No. 1 to the Pan American Petroleum Company. The bill prays for an injunction, for the appointment of a receiver and for an account. It alleges that the contracts and leases were secured by conspiracy, fraud, and bribery and were without authority of law.

The trial court found the contracts and leases void and ordered a cancellation of them and the surrender of lands and equipment and an accounting. The court allowed credit for improvements made by the companies on the leased premises and also for the actual expenses of drilling. From these rulings both sides took an appeal to the Circuit Court of Appeals where the rulings as to cancellation and surrender of properties were affirmed but the ruling allowing credits to the companies was reversed.

In 1910 about 3,041,000 acres of land were authorized by Congress to be withdrawn from the privileges of settlement, exploration, and location, confirming what had already been accomplished in substance by an executive proclamation. These were reserved for naval puposes in furtherance of the government's plan to maintain a large reserve of oil in the ground for naval purposes.

Under the leasing act of 1920 the Secretary of Interior was authorized to make leases in oil and gas lands *exclusive* of those withdrawn for naval purposes. As to these the Secretary of the Navy was to have supervision, make leases, etc. However, in May, 1921, the President promulgated an executive order purporting to commit the administration of the reserved lands to the Secretary of the Interior subject to supervision by the President. In March 1921, Mr. Denby became Secretary of the Navy and Mr. Fall, Secretary of the Interior.

The contract of April 25, 1922 which was involved in this case was executed by the Acting Secretary of Interior and by the Secretary of the Navy on behalf of the United States. By its terms the transport company agreed to furnish 1,500,000 of fuel oil to the Naval Station at Pearl Harbor, Hawaii, and deliver it into storage facilities to be constructed by the company and the company was to be compensated in oil on the basis of prevailing prices equal to market value of the fuel oil and sufficient to cover the cost of storage facilities. It further provided that if production decreased so as to unduly prolong performances then the government in the discretion of Secretary of Interior would grant additional leases on lands in Reserve No. 1 to maintain deliveries of 500,000 barrels per annum.

The lease of June 5, 1922 was signed by the Assistant Secretary of Interior and was assigned to the Petroleum Company.

The contract of December 11, 1922 was signed by the Secretary of the Interior, and the Secretary of the Navy. It declared that the oil tanks in Pearl Harbor could not be filled promptly on the basis of exchange for crude oil coming to the government under then existing leases. The royalties under this range from 12½ to 35%. Pursuant to this contract further leases were granted.

In February 1924 Congress adopted a joint resolution declared that from evidence taken by the Committee on Public Lands and Survey it appeared that the contract of April 25, 1922 and the lease of December 11, 1922 were executed under circumstances indicating fraud and corruption and in violation of the government's policy to maintain *in the ground* a reserve supply of oil. It also authorized the President to institute proceedings to annul and cancel the lease and contracts.

The facts found in substance by the trial court were as follows: E. K. Doheny controlled both companies. Fall was active in procuring the transfer of the administration of the reserves to the Department of Interior and dominated the negotiations leading up to the leases and contracts. Denby was passive throughout the proceedings and signed the contracts and lease of April 25, 1922 under a misapprehension and without full knowledge of their contents. Negotiations were kept secret from Congress and the public. On November 30th Doheny sent Fall at the latter's request $100,000.00 for which Fall returned a demand note for the same amount. This note was then mutilated by Doheny so as to be unenforceable. Next day Fall granted another lease at regulation royalties in lieu of the reduction in royalties requested by Doheny. The bids for leases were conducted under conditions favor-

able to Doheny's interests but unfair to others. The Transport Company submitted two bids, A, which was in accordance with the invitation for bids, and B which was not. This latter bid, though least favorable to the government was accepted. Finally the lease of December 11 was arranged without any competition of any sort and a schedule of royalties agreed upon by Fall and Doheny. It was further found that the leases and contracts had been fraudulently induced and they were decreed to be annulled and cancelled.

The petitioners contended that the findings below were erroneous and argued that:

> The Secretary of the Navy did in fact exert the authority conferred by the Act of June 4, 1920, and that Fall did not dominate the making of the contracts and leases; that it was not proved by any evidence competent or admissible against the companies that Doheny gave Fall $100,000; that the giving of the money did not affect the transaction; that it was a loan and not a bribe, and that the record does not sustain the conclusion of the District Court.

The Supreme Court however, found that the findings were supported by the evidence, except that Denby signed the contracts under a misapprehension and without full knowledge of their contents. Concerning this the Court, said, speaking through Mr. Justice Butler:

> As to that the record requires an opposite finding. Under the Act of June 4, 1920, it was his official duty to administer the oil reserves; he was not called as a witness, and it is not to be assumed that he was without knowledge of the disposition to be made of them or of the means employed to get storage facilities and fuel oil for the Navy. He is presumed to have had knowledge of what he signed; there are direct evidence and proven circumstances to show that he had. But the evidence sustains the finding that he took no active part in the negotiations, and that Fall, acting collusively with Doheny, dominated the making of the contracts and leases.

The contention that there was no competent evidence against the companies to show that Doheny gave Fall $100,000.00 was rejected on the ground that Doheny's testimony before the Senate Committee was admissible and supported this finding. The evidence was held admissible on the ground that since Doheny was president of the two companies his testimony was within the scope of his authority as such and hence binding on the companies.

The facts of the case are summarized in the following quotation from the opinion delivered by Mr. Justice Butler:

> The facts and circumstances disclosed by the record show clearly that the interest and influence of Fall as well as his official action were corruptly secured by Doheny for the making of the contracts and leases: that, after the executive order of May 31, 1921, Fall dominated the administration of the Naval Reserves, and that the consummation of the transaction was brought about by means of collusion and corrupt conspiracy between him and Doheny. Their *purpose* was to get for petitioners oil and gas leases covering *all the unleased lands in the Reserve*. The making of the contracts was a means to that end. The whole transaction was tainted with corruption. It was not necessary to show that the money transaction between Doheny and Fall constituted bribery as defined in the Criminal Code or that Fall was financially interested in the transaction or that the United States suffered or was liable to suffer any financial loss or disadvantage as a result of the contracts and leases. It is enough that these companies sought and corruptly obtained Fall's dominating influence in furtherance of the venture. It is clear that, at the instance of Doheny, Fall so favored the making of these contracts and leases that it was impossible for him loyally or faithfully to serve the interests of the United States. The lower courts for that reason rightly held the United States entitled to have them adjudged illegal and void.

The contention of the government that the leases and contracts were unauthorized was also sustained and with reference to them the opinion reads as follows:

> The transaction evidenced by the contracts and leases was not authorized by the Act of June 4, 1920. The grant of authority to the Secretary of the Navy did not indicate a change of policy as to conservation of the reserves. The Act of June 25, 1910, the Act of February 25, 1920, the executive orders, and the Joint Resolution of February 8, 1924, show that it has been and is the policy of the United States to maintain a great naval petroleum reserve in the ground. While the possibility of loss by drainage might be a reason for legislation enabling the Secretary to take any appropriate action that at any time might become necessary to save the petroleum, it is certain that the contracts and leases have no such purpose.

Finally the Court having rejected the contentions of the petitioners, turned its attention to the contention of the government that the defendants below were not entitled to any credits for improvements and storage facilities erected by them. This contention was upheld in the following language:

> In suits brought by individuals for recission of contracts the maxim that he who seeks equity must do equity is generally applied, so that the party against whom relief is sought shall be remitted to the position he occupied before the transaction complained of. "The court proceeds on the principle, that as the transaction ought never to have taken place, the parties are to be placed as far as possible in the situation in which they would have stood if there had never been any such transaction." And, while the perpetrator of the fraud has no standing to rescind, he is not regarded as an outlaw; and, if the transaction is rescinded by one who has the right to do so, "the courts will endeavor to do substantial justice so far as is consistent with adherence to law." The general principles of equity are applicable in a suit by the United States to secure the cancelation of a conveyance or the rescission of a contract. But they will not be applied to frustrate the purpose of its laws or to thwart public policy. . . .
>
> The petitioners stand as wrongdoers, and no equity arises in their favor to prevent granting the relief sought by the United States. They may not insist on payment of the cost to them or the value to the Government of the improvements made or fuel oil furnished as all were done without authority and as means to circumvent the law and wrongfully to obtain the leases in question. As Congress had not authorized them, it must be assumed that the United States did not want the improvements made or was not ready to bear the cost of making them. No storage of fuel oil at Pearl Harbor was authorized to be made in excess of the capacity of, or in any places other than, the facilities provided for that purpose pursuant to the authorization by Congress. Whatever their usefulness or value, it is not for the courts to decide whether any of these things are needed or should be retained or used by the United States. Such questions are for the determination of Congress. It would be unjust to require the United States to account for them until Congress acts; and petitioners must abide its judgment in respect of the compensation, if any, to be made. And this applies to the claim on account of the fuel oil as well as to the other items. Clearly petitioners are in no better posiiton than they would be if they had paid money to the United States, instead of putting the fuel oil in storage. Equity does not condition the relief here sought by the United States upon a return of the consideration.

Messrs. Frederic R. Kellogg and Frank J. Hogan argued the case for the petitioners and Messrs. Owen J. Roberts and Atlee Pomerene for the government.

Interstate Commerce,—Valuation of Railroads

A final order fixing the value of railroad property is merely an exercise of the function of investigation. Of itself, it does not affect any right, privilege, or obligation. It may never be acted on. Congress has made no provision for a judicial review of such an order and none exists under the general power of a court of equity.

United States v. Los Angeles and Salt Lake Railroad Co. Adv. Op. 446; Sup. Ct. Rep. v. 47, p. 413.

The railroad in this case brought a suit to enjoin and annul an order of the Interstate Commerce Commission which purported to find the "final value" of its property pursuant to statutory authority. It contended that the order was a source of irreparable injury to it because under the Act to Regulate Commerce all final valuations determined by the Commission are made prima facie evidence of the value of property in a variety of judicial proceedings. The gravamen of the bill is that the order is invalid because in excess of the powers of the Commission, is contrary to the Valuation Act, and is in violation of the due process clause of the Fifth Amendment. A number of specific objections are made to the order but as the decision in the case does not turn on them they need not be recounted.

The jurisdiction of the trial court was invoked under the Urgent Deficiencies Act and under the general powers of a court of equity. The United States was named defendant and the Commission became a party by intervention. The United States contended that the order was not a final order within the meaning of the Urgent Deficiencies Act, challenged the jurisdiction of the Court under its general equity powers and moved to dismiss the bill. This motion was overruled on the ground that the Act allowed a judicial review of orders determining final values and after a hearing an injunction was entered annulling the order and enjoining its use for any purpose. An appeal was then taken to the Supreme Court where the decree was reversed.

In the opinion of the Court delivered by Mr. Justice Brandeis the precise nature of the order in question was made clear:

> The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility, which does not subject the carrier to any liability, civil or criminal, which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation. Moreover, the investigation made was not a step in a pending proceeding in which an order of the character of those held to be judicially reviewable could be entered later. It was merely preparation for possible action in some proceeding which may be instituted in the future—preparation deemed by Congress necessary to enable the Commission to perform adequately its duties, if and when occasion for action shall arise. The final report may, of course, become a basis for action by the Commission, as it may become a basis for action by Congress or by the legislature or an administrative board of a State. But so may any report of an investigation, whether made by a committee of Congress or by the Commission pursuant to a resolution of Congress or of either branch thereof.

The contention that the order was in violation of the due process clause was met with the following argument:

> The mere fact that Congress has, in terms, made "all final valuations . . . and the classification thereof . . . *prima facie* evidence of the value of the property in all proceedings under the Act to Regulate Commerce . . . in all judicial proceedings for the enforcement of the Act . . . and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission" is, obviously, not a violation of the due process clause justifying proceedings to annul the order. That to make the Commission's conclusions *prima facie* evidence in judicial proceedings is not a denial of due process, was settled by *Meeker v. Lehigh Valley R. R. Co.* It was there said of a like provision relating to reparation orders: "This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. At most therefore it is merely a rule of evidence."

The validity of the theory of the lower court in holding this a final order subject to judicial review was denied. Concerning this proposition the learned Justice said:

> The District Court rested jurisdiction to entertain a suit to set aside the valuation order largely upon the provisions of paragraph (j), believing that such a suit was within the scope of the words "upon the trial of any action involving a final value." That paragraph was intended to apply to actions brought to set aside rate fixing orders in which the question of the value of the carrier's property would be material. In our opinion it is not applicable to so-called orders fixing only valuations. The objection to entertaining this suit to annul the final valuation is not merely that the question presented is moot, as in *United States v. Alaska Steamship Co.* . . . or that the plaintiff's interest is remote and speculative as in *Hines Yellow Pine Trustees v. United States.* . . . There is the fundamental infirmity that the mere existence of error in the final valuation is not a wrong for which Congress provides a remedy under the Urgent Deficiencies Act.

The final contention that the trial court had jurisdiction under its general equity powers was likewise rejected with the brief comment that:

> No basis is laid for relief under the general equity powers. The investigation was undertaken in aid of the legislative purpose of regulation. In conducting the investigation, and in making the report, the Commission performed a service specifically delegated and prescribed by Congress. Its conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction. Whether the remedy conferred by the Urgent Deficiencies Act is in all cases the exclusive equitable remedy, we need not determine.

The case was argued by Mr. Blackburn Esterline for the United States, by Mr. P. J. Farrell for the Commission and by Mr. Charles E. Hughes for the Appellee.

Statutes,—Price Regulation

That part of the New York statute forbidding the resale of theatre tickets at an advance of more than fifty cents over the box office price is unconstitutional.

Tyson and Brother v. Banton et al. Adv. Op. 493, Sup. Ct. Rep. v. 47, p. 426.

A New York statute declared that "the price of or charge for admission to theatres . . . or other places where public exhibitions, games, contests or performances are held is a matter affected with a public interest and subject to the supervision of the state for the purpose of safeguarding the public against fraud, extortion, exhorbitant rates and similar abuses." It forbade licensees' reselling tickets to theatres, etc., at a price in excess of fifty cents in advance of the price printed on the face of the ticket and compelled operators of theatres, etc., to print the price of admission on the ticket.

Appellant was engaged in reselling tickets to theatres and other places of amusement in New York City. It employed a number of persons, incurred large ex-

penses and sold an average of approximately 300,000 tickets a year. Such tickets it obtained from theatres themselves, or from other brokers or distributors and it was duly licensed to carry on the business.

This action was brought to enjoin the respondents from proceeding to enforce the section of the statute regulating the resale price of tickets and to enjoin any criminal proceedings under the statute. The bill alleged that the respondents threatened to institute civil and criminal proceedings and to forfeit the appellant's license, and that the terms of the statute were so drastic and the penalties so heavy that it was impossible to resell any tickets even for the purpose of testing the validity of the act.

A statutory court of three judges heard the case below and denied the prayer for relief, thus holding the act to be constitutional. On appeal this ruling was reversed by a divided court. The prevailing opinion was delivered by Mr. Justice Sutherland in whose language the scope of the case is described as follows:

> Strictly, the question for determination relates only to the maximum price for which an entrance ticket to a theatre, etc., may be resold. But the answer necessarily must be to a question of greater breadth. The statutory declaration is that the price of or charge for admission to a theatre, place of amusement or entertainment or other place where public exhibitions, games, contests or performances are held, is a matter affected with a public interest. To affirm the validity of "172" (which fixed the price) is to affirm this declaration completely, since appellant's business embraces the resale of entrance tickets to all forms of entertainment therein enumerated. And since the ticket broker is a mere appendage of the theatre, etc., and the *price of* or *charge for admission* is the essential element in the statutory declaration, it results that the real inquiry is whether every public exhibition, game, contest or performance, to which an admission charge is made, is clothed with a public interest, so as to authorize a law-making body to fix the maximum amount of the charge, which its patrons may be required to pay.

The learned Justice then considered the legal theory on which rests the power to fix prices. He pointed out that the authority to regulate a business may exist quite distinct from the power to fix prices and that the latter ordinarily does not exist in respect to private property or business, but is limited to cases where the property or business has become "affected with a public interest." This phrase was given rather extensive consideration in the opinion by way of an attempt to clarify its meaning. It was declared that a business is not affected with a public interest merely because it is large, or because the public is warranted in having a feeling of concern as to its maintenance or by virtue of the mere fact that the public derives benefit or accommodation from such maintenance, or yet because a legislative declaration has proclaimed it to be affected with a public interest.

The analysis made in the Wolf case of the classes of business which have been held to be of the nature falling within Lord Hale's description of being affected with such an interest was reiterated. The classification suggested was (1) Those carried on under the authority of a public grant of privileges which imposes the duty of rendering service to any member of the public: (2) Certain occupations, such as innkeeping historically recognized as having a peculiarly public character; (3) businesses not public in their inception but which have so developed that it can be inferred that the owner has granted an interest to the public which interest is entitled to protection. This last group is exemplified by the Munn case where grain elevators were held to have developed into public businesses.

The instant case, if it falls within any of these classes must fall within the last, and it was to the consideration of this point that attention was next drawn. With reference to this the learned Justice said:

> The significant requirement is that the property shall be devoted to a use in which the public has an interest, which simply means, as in terms it is expressed at page 130, that it shall be devoted to a "public use." Stated in another form, a business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been *devoted* to a public use and its use thereby, in effect, *granted* to the public.

The authorities in which insurance companies were involved were distinguished and German Alliance Ins. Co. v. Kansas was declared to mark

> the extreme limit to which this court thus far has gone in sustaining price fixing legislation. There the court said that a business might be affected with a public interest so as to permit price regulation although no public trust was impressed upon the property and although the public might not have a legal right to demand and receive service; and it was held that fire insurance was such a business. Mr. Justice McKenna, speaking for the court, pointed out that in an insurance business each risk was not individual; that "there can be standards and classification of risks, determined by the law of averages," and, while there might be variations, that rates are fixed and accommodated to such standards. Discussing the question whether the business was affected with a public interest so as to justify regulation of rates, it was then said:
>
> "And we mean a broad and definite public interest. In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation." . . .
>
> The decision proceeds upon the ground that the insurance business is to be distinguished from ordinary private business; that an insurance company, in effect, is an instrumentality which gathers funds upon the basis of equality of risk from a great number of persons—sufficiently large in number to cause the element of chance to step out and the law of averages to step in as the controlling factor,—and holds the numerous amounts so collected as a general fund to be paid out to those who shall suffer losses. Insurance companies do not sell commodities;—they do not sell anything. They are engaged in making contracts with and collecting premiums from a large number of persons, the effect of their activities being to constitute a guaranty against individual loss and to put a large number of individual contributions into a common fund for the purpose of fulfilling the guaranty. In this fund all are interested, not in some vague or sentimental way, but in a very real, practical and definite sense. It was from the foregoing and other considerations peculiar to the insurance business that the court drew its conclusion that the business was clothed with a public interest.

Next in order were considered cases in which price fixing with respect to rents was held valid on the ground that an emergency existed. The essence of those decisions was summarized as follows:

> From the foregoing review it will be seen that each of the decisions of this court upholding governmental price regulation, aside from cases involving legislation to tide over temporary emergencies, has turned upon the existence of conditions, peculiar to the business under consideration, which bore such a substantial and definite relation to the public interest as to justify an indulgence of the legal fiction of a grant by the owner to the public of an interest in the use.
>
> Lord Hale's statement that when private property is "affected with a public interest, it ceases to be *juris privati* only," is accepted by this court as the guiding principle in cases of this character.

Finally the learned Justice discussed the bearing of the statement of Lord Hale on the theatre business. The opinion of the majority made clear that a theatre does not fall within the scope of that statement, saying:

> A theatre or other place of entertainment does not meet this conception of Lord Hale's aphorism or fall within the reasons of the decisions of this court based

upon it. A theatre is a private enterprise, which, in its relation to the public, differs obviously and widely, both in character and degree, from a grain elevator, standing at the gateway of commerce and exacting toll, amounting to a common charge, for every bushel of grain which passes on its way among the states; or stock yards, standing in like relation to the commerce in live stock; or an insurance company, engaged, as a sort of common agency, in collecting and holding a guaranty fund in which definite and substantial rights are enjoyed by a considerable portion of the public sustaining interdependent relations in respect of their interests in the fund.

The correct classification of the business here involved was held to be more nearly with that of furnishing food and shelter as is illustrated by the observation that:

> The interest of the public in theatres and other places of entertainment may be more nearly, and with better reason, assimilated to the like interest in provision stores and markets and in the rental of houses and apartments for residence purposes; although in importance it falls below such an interest in the proportion that food and shelter are of more moment than amusement or instruction. As we have shown, there is no legislative power to fix the prices of provisions or clothing or the rental charges for houses or apartments, in the absence of some controlling emergency; and we are unable to perceive any dissimilarities of such quality or degree as to justify a different rule in respect of amusements and entertainments.

Turning finally to the argument that the statute was a reasonable means of combatting fraud the learned Justice observed that:

> It should not be difficult similarly to define and penalize in specific terms other practices of a fraudulent character, the existence or apprehension of which is suggested in brief and argument. But the difficulty or even the impossibility of thus dealing with the evils, if that should be conceded, constitutes no warrant for suppressing them by methods precluded by the Constitution. Such subversions are not only illegitimate but are fraught with the danger that, having begun on the ground of necessity, they will continue on the score of expediency, and finally, as a mere matter of course. Constitutional principles, applied as they are written, it must be assumed, operate justly and wisely as a general thing, and they may not be remolded by lawmakers or judges to save exceptional cases of inconvenience, hardship or injustice.

Four members of the Court dissented, three of them delivering separate opinions. The dissenting opinion of Mr. Justice Holmes is reprinted in full, as follows:

> We fear to grant power and are unwilling to recognize it when it exists. The States very generally have stripped jury trials of one of their most important characteristics by forbidding the judges to advise the jury upon the facts and when legislatures are held to be authorized to do anything considerably affecting public welfare it is covered by apologetic phrases like the police power, or the statement that the business concerned has been dedicated to a public use. The former expression is convenient, to be sure, to conciliate the mind to something that needs explanation: the fact that the constitutional requirement of compensation when property is taken cannot be pressed to its grammatical extreme; that property rights may be taken for public purposes without pay if you do not take too much; that some play must be allowed to the joints if the machine is to work. But police power often is used in a wide sense to cover and, as I said, to apologize for the general power of the legislature to make a part of the community uncomfortable by a change.
>
> I do not believe in such apologies. I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain. Coming down to the case before us I think, as I intimated in *Adkins v. Children's Hospital*, that the notion that a business is clothed with a public interest and has been devoted to the public use is little more than a fiction intended to beautify what is disagreeable to the sufferers. The truth seems to me to be that, subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a sufficient force of public opinion behind it. Lotteries were thought useful adjuncts of the State a century or so ago; now they are believed to be immoral and they have been stopped. Wine has been thought good for man from the time of the Apostles until recent years. But when public opinion changed it did not need the Eighteenth Amendment, notwithstanding the Fourteenth, to enable a State to say that the business should end. What has happened to lotteries and wine might happen to theatres in some moral storm of the future, not because theatres were devoted to a public use, but because people had come to think that way.
>
> But if we are to yield to fashionable conventions, it seems to me that theatres are as much devoted to public use as anything well can be. We have not that respect for art that is one of the glories of France. But to many people the superfluous is the necessary, and it seems to me that Government does not go beyond its sphere in attempting to make life livable for them. I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But if the people of the State of New York speaking by their authorized voice say that they want it, I see nothing in the Constitution of the United States to prevent their having their will.

Mr. Justice Stone also delivered a dissenting opinion in which he first stated wherein he agreed with the majority and wherein he disagreed, saying:

> I can agree with the majority that "constitutional principles, applied as they are written, it must be assumed, operate justly and wisely as a general thing, and they may not be remolded by lawmakers or judges to save exceptional cases of inconvenience, hardship, or injustice." But I find nothing written in the Constitution, and nothing in the case or common law development of the Fourteenth Amendment, which would lead me to conclude that the type of regulation attempted by the State of New York is prohibited.

Next in order the learned Justice summarized some of the authorities which he conceived to support the validity of the statute in question, and stated that the problem should be approached from the well settled rule that within the scope of legislative power the legislature is the exclusive judge. Particular emphasis was placed on the authority of Munn v. Illinois where the Court sustained the fixing of charges for storing grain on a set of facts which showed that a natural monopoly had developed whose owners exacted tribute from the public. In his discussion of that case the learned Justice pointed out that the statute did not attempt to fix the price of admission to theatres, but merely to fix a limit on charges to be made by brokers in excess of the price of admission.

The monopolistic character of the brokers' business was shown by a resumé of the facts disclosed by the record to the effect that:

> There are about sixty first class theatres in the borough of Manhattan. Brokers annually sell about two-million tickets, principally for admission to these theatres. Appellant sells three hundred thousand thickets annually. The practice of the brokers, as revealed by the record, is to subscribe, in advance of the production of the play and frequently before the cast is chosen, for tickets covering a period of eight weeks. The subscriptions must be paid two weeks in advance and about twenty-five per cent. of the tickets unsold may be returned. A virtual monopoly of the best seats, usually the first fifteen rows, is thus acquired and the brokers are enabled to demand extortionate prices of theatregoers. Producers and theatre proprietors are eager to make these advance sales which are an effective insurance against loss arising from unsuccessful productions. The brokers are in a position to prevent the direct purchase of tickets to a desirable seat and to exact from the patrons of the successful productions a price sufficient to pay the loss of those which are unsuccessful, plus an excessive profit to the broker.

Turning his attention to this state of facts Mr. Justice Stone admitted that as a general proposition the power of a state to control prices is limited to special circumstances.

> But when that power is invoked in the public interest and in consequence of the gross abuse of private right disclosed by this record, we should make searching and critical examination of those circumstances which in the past have been deemed sufficient to justify the exercise of the power, before concluding that it may not be exercised here.

Continuing this line of reasoning it was urged that:

> An examination of the decisions of this Court in which price regulation has been upheld will disclose that the element common to all is the existence of a situation or a combination of circumstances materially restricting the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community. Whether this situation arises from the monopoly conferred upon public service companies or from the circumstance that the strategical position of a group is such as to enable it to impose its will in matters of price upon those who sell, buy or consume, as in *Munn v. Illinois*, or from the predetermination of prices in the councils of those who sell, promulgated in schedules of practically controlling constancy as in *German Alliance Ins. Co. v. Kansas*, or from a housing shortage growing out of a public emergency as in *Block v. Hirsh*, and others, the result is the same. Self interest is not permitted to invoke constitutional protection at the expense of the public interest and reasonable regulation of price is upheld.
>
> That should be the result here. We need not attempt to lay down any universal rule to apply to new and unknown situations. It is enough for present purposes that this case falls within the scope of the earlier decisions and that the exercise of legislative power now considered was not arbitrary. The question as stated is not one of reasonable prices, but of the constitutional right in the circumstances of this case to exact exorbitant profits beyond reasonable prices.

Finally the learned Justice rapidly surveyed a number of cases in which the scope of the police power has been considered and concluded by arguing that the power is not unreasonable merely because it dealt with something not essential to life. With respect to this he said:

> Nor is the exercise of the power less reasonable because the interests protected are in some degree less essential to life than some others. Laws against monopoly which aim at the same evil and accomplish their end by interference with private rights quite as much as the present law are not regarded as arbitrary or unreasonable or unconstitutional because they are not limited in their application to dealings in the bare necessities of life.
>
> The problem sought to be dealt with has been the subject of earlier legislation in New York and has engaged the attention of the legislators of other states. That it is one involving serious injustice to great numbers of individuals who are powerless to protect themselves cannot be questioned. Its solution turns upon considerations of economics about which there may be reasonable differences of opinion. Choice between these views takes us from the judicial to the legislative field. The judicial function ends when it is determined that there is basis for legislative action in a field not withheld from legislative power by the Constitution as interpreted by the decisions of this Court. Holding these views, I believe the judgment below should be affirmed.

Mr. Justice Sanford also delivered a separate dissenting opinion. He conceived the issue to be not whether the maintenance of theatres was affected with a public interest, but rather whether the business of maintaining ticket brokerages was affected with a public interest so that it could be regulated by fixing a maximum charge for the services rendered. The learned Justice argued that the validity of the statute falls within the principle of Munn v. Illinois saying:

> I think, that here — without reference to the character of the business of the theatres themselves—the business of the ticket brokers, who stand in "the very gateway" between the theatres and the public, depriving the public of access to the theatres for the purchase of desirable seats at the regular prices, and exacting toll from patrons of the theatres desiring to purchase such seats, has become clothed with a public interest and is subject to regulation by the legislature limiting their charges to reasonable exactions and protecting the public from extortion and exorbitant rates.

Mr. Louis Marshall argued the case for the appellant and Mr. Felix C. Bevenga for the appellee.

Rate Regulation—Determination of Value for Reasonable Return

In determining the reasonableness of rates to be charged by public utilities it is proper to give weight to the cost of reproduction less depreciation on the basis of prices prevailing at the date of valuation and to include as assets intangible values such as going value and water rights.

McCardle v. Indianapolis Water Company, Adv. Ops. 154; Sup. Ct. Rep. v. 47, p. 144.

The complainant, the Indianapolis Water Company, sued to enjoin the Public Service Commission of Indiana, its members, and the City of Indianapolis from enforcing an order of the Commission fixing water rates on the ground that the rates fixed were confiscatory. The principal question involved was the method of evaluating the properties of the complainant company.

The proceeding arose by way of a petition filed June 8, 1923, to increase existing rates on the ground that they were inadequate. The Commission found the value as of May 31, 1923, to be $15,260,400 and by order fixed the rates so as to yield a return of seven per cent on this amount. The lower court enjoined enforcement of the order on the ground that the evaluation fixed was $3,500,000 less than the actual value on January 1, 1924, and said that the value as of that date was not less than $19,000,000. From this ruling of the court the city and the Commission appealed jointly.

In support of their appeal the appellants contend that the court applied as a measure of value the cost of reproduction, less depreciation, on the basis of spot prices January 1, 1924, or gave that figure controlling weight.

The appellees contend, on the contrary, that the cost of reproduction less depreciation was in excess of $22,500,000 as shown by the evidence, and that the court did not measure the value as urged by the appellants or give undue weight to that as a measure of value.

At the hearing before the Commission both sides introduced estimates by expert engineers as to value. These estimates differed in amount, the variance being due to:

> Differences of opinion as to the "application of the cost of reproduction theory to the ten-year period prices," details of the work necessary to construct the property, amount to be included for structural overheads, and the condition of certain items of the property. It says that these differences have been analyzed and explained by the parties, and that further analysis and careful weighing of the evidence would be likely to lead to a compromise figure between the two extremes. "However that may be, the Commission is inclined to accept the report of its staff as a basis of value, believing it to be conservative and accurate. Considering all the facts,

> including all the appraisals and the other evidence concerning the trend of prices, the Commission is of the opinion that in this case the average of prices for the ten-year period ending with 1921, the last full ten years available, most nearly represents the fair value of petitioner's physical property."

The appeal was decided in favor of the appellees, in an opinion delivered by Mr. Justice Butler. The opinion contains a rather extensive discussion of the estimates and the accounting theories underlying them which were presented to the Commission, but as they are not essential to an understanding of the principles applied they need not be adverted to here.

The first principle which is accepted as a matter of course is that a rate is confiscatory unless it yields a reasonable return on the present value of the property used by the public utility in rendering the service.

The learned Justice took this as a point of departure and devoted the remaining parts of the opinion to an exposition of this rule and to an elaboration of it as applied to the complicated facts of problems of the type here involved. In *Smyth v. Ames*, 169 U. S. 466, 547, the court had said that in ascertaining value, "the present as compared with the original cost of construction was among other things a proper matter for consideration:"

> But this does not mean that the original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure. The weight to be given to such cost figures and other items or classes of evidence is to be determined in the light of the facts of the case in hand.

The phase of the rule most elaborately discussed is that requiring that weight be given to the cost of reproduction. The court ruled that this cost must be determined with reference to:

(1) The cost of materials and rate of wages at the time of the construction together with an intelligent and honest forecast as to future wages and prices; (2) the time as of the day of valuation and not the period necessary to construct the physical plant in order to have it in operation at the valuation date; (3) the inclusion of all intangible values as well as the value of physical properties.

The first element was discussed as follows:

> But in determining present value, consideration must be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. In every confiscation case, the future as well as the present must be regarded. It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future.

The second element is implicit in the language of the opinion where the learned Justice said:

> Undoubtedly, the reasonable cost of a system of waterworks, well planned and efficient for the public service, is good evidence of its value at the time of construction. And such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices. And, as indicated by the report of the commission, it is true that, if the tendency or trend of prices is not definitely upward or downward and it does not appear probable that there will be a substantial change of prices, then the present value of lands plus the present cost of constructing the plant, less depreciation, if any, is a fair measure of the value of the physical elements of the property. The validity of the rates in question depends on property value January 1, 1924, and for a reasonable time following. While the values of such properties do not vary with frequent minor fluctuations in the prices of material and labor required to produce them, they are affected by and generally follow the relatively permanent levels and trends of such prices . . . .
>
> The trend has been upward rather than downward. The price level adopted by the commission—the average for ten years ending with 1921—was too low. And it is clear that a level of prices higher than the average prevailing in the ten years ending with 1923 should be taken as the measure of value of the structural elements on and following the effective date of the rate order complained of.

That spot prices are to be controlling and not the average of prices over a period necessary to construct the plant is shown by the fact that the court adopted $19,000,000 as the minimum basis for determining reasonable rates. Since the rates ordered yielded a return of but five per cent on $19,500,000, which was the lowest before submitted as of the date of valuation, the decree of the lower court enjoining the enforcement of the Commission's order was affirmed.

The last element emphasized was that intangible assets must be included in arriving at the value of the utility. Among assets of this nature included here were water rights and going value, because:

> The decisions of this court declare: "That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use."

It is somewhat problematical as to precisely what force should be attached to "spot" reproduction cost less depreciation. The learned Justice indicated that it would have been erroneous for the trial court to give dominant or controlling weight to this factor. But on the other hand the exact weight to be given to this figure is not made clear by the comment that:

> While some expressions of the district judge indicate that he was of opinion that dominant or controlling weight should be given to cost of reproduction less depreciation estimated on spot prices as of January 1, 1924, it is clear that the $19,000,000 fixed by him as the minimum value could not have been arrived at on that basis.

Mr. Justice Brandies delivered a dissenting opinion in which Mr. Justice Stone joined. He accepted the rule of Smyth v. Ames that though reproduction cost is evidence, it is not conclusive and each other class of evidence must be given such weight as is just and right in the case. Quoting from the Georgia Railway & Power case he said:

> The refusal of the commission and of the lower court to hold that, for rate-making purposes, the physical properties of a utility must be valued at the replacement cost less depreciation was clearly correct. As was said in Minnesota Rate Cases: "The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

The learned Justice also expressed vigorous dissent from the view of the majority as to "spot" reproduction. His language with reference to that proposition was:

> Nor do I find in the decisions of this Court any support for the view that a peculiar sanction attaches to "spot" reproduction cost, as distinguished from the amount that it would actually cost to reproduce the

plant if that task were undertaken at the date of the hearing. "Spot" reproduction would be impossible of accomplishment without the aid of Aladdin's lamp. The actual cost of a plant may conceivably indicate its actual value at the time of completion or at some time thereafter. Estimates of cost may conceivably approximate what the cost of reproduction would be at a given time. But where a plant would require years for completion, the estimate would be necessarily delusive if it were based on "spot" prices of labor, materials and money. The estimate, to be in any way worthy of trust, must be based on a consideration of the varying costs of labor, materials, and money for a period at least as long as would be required to construct the plant and put it into operation. Moreover, the estimate must be made in the light of a longer experience and with due allowances for the hazards which attend all prophesies in respect to prices. The search for value can hardly be aided by a hypothetical estimate of the cost of replacing the plant at a particular moment, when actual reproduction would require a period that must be measured by years.

Mr. Arthur L. Gilliom argued for the Commission, Mr. Taylor E. Groninger for the City and Mr. William L. Ransom for the water company.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

LAW Reform: Papers and Addresses by a Practising Lawyer. By Henry W. Taft, of the New York Bar (The MacMillan Company, New York; $3, 1926.) The author of this interesting volume is the gifted Chairman of the Committee on Jurisprudence and Law Reform of the American Bar Association, and its pages reflect most vividly the spirit which has animated his long service to that Committee and to many other instrumentalities of the organized Bar. The keynote of the volume is Mr. Taft's confidence that we are entering upon an era of reform in the administration of justice in the United States. He makes no attempt "to adumbrate a general scheme of reform," but discusses remedially "divers anomalies and defects" in the law. The book takes its title from an introductory essay, designed to furnish a background of cohesion for the various papers, which deal with such subjects as Will Contests in New York State, Uniformity of Procedure in the Federal Courts, Justice and the Poor, the Press and the Courts, Freedom of Speech and the Espionage Act, the World Court and the League of Nations. On practically all of these subjects, Mr. Taft has served on the firing line, as a lawyer and as a public-spirited leader of opinion. On all of them, he has special qualifications to speak and write; and his readable pages narrate many incidents of his leadership at the Bar and his long fight for constructive reforms urged by the Bar.

Without any attempt to defend his profession or shift responsibility for delays in the accomplishment of needed reforms, Mr. Taft seems to me to make three things very clear:

(1) To a tremendous extent, the lawyers of America are giving time, energy and zealous leadership to efforts to improve the administration of justice;

(2) Comprehensive reform in the law cannot be accomplished without militant and general popular support; and

(3) The public opinion which has so far been aroused on this subject has largely expended its force in criticism of the legal profession, whereas an equal popular support of the disinterested efforts of the profession would long ago have overthrown the ramparts of legislative lethargy and resistance.

We of the Bar are all greatly indebted to Mr. Taft for this timely and hopeful volume. It may be put into the hands of laymen and legislators with confidence. Burke said that "A disposition to preserve and an ability to improve, taken together, would be my standard of a statement." Mr. Taft's mature, broad-minded and genial statesmanship in the field of law reform meets that worthy test. Recognizing also, with Burke, that a governmental or administrative organism "without means of change is without the means of its own conservation," Mr. Taft creates an atmosphere of hope and confidence as to what may soon be accomplished under the leadership of the American Bar. In that practical work, Mr. Taft fills a position of leadership and wide influence, as Chairman of the Committee on Jurisprudence and Law Reform; and this volume of his papers and addresses is a welcome addition to the legal literature which voices the vision so beautifully phrased by Chief Judge Cardozo:

> "The time is ripe for betterment. *'Le droit a ses époques,'* says Pascal in words which Professor Hazeltine has recently recalled to us. The law has 'its epochs of ebb and flow.' One of the flood seasons is upon us. Men are insisting, as perhaps never before, that law shall be made true to its ideal of justice. Let us gather up the driftwood, and leave the waters pure."

WILLIAM L. RANSOM.

New York.

The Federal Income Tax, by Roland R. Foulke. Philadelphia: The John C. Winston Co. 1927. Pp. xxxviii, 1146. $12. This book announces in its preface its ambitious purpose "to pour the light of legal principle upon the income tax. . . . This is believed to be the first treatise in which any author has attempted to discuss the legal principle involved in the application of the federal income tax statute. Although the law is the perfection of reason, it is not any man's reason,

and the truth of this statement is fully exemplified by the subject in hand." The author suggests that other writers have distorted and obscured the subject by fitting "the income tax over the general headings of the law"; that he has clarified it "by fitting the provisions of the statute around the various headings of the law."

In the event that this distinction is not entirely clear, an examination of the text will disclose a rather definite difference, at least in emphasis, between Mr. Foulke's method of treatment and that of other current writers on the subject. Other writers have apparently proceeded upon the premise that since the federal income tax is wholly a statutory creation, a commentary on it should primarily be devoted to interpretation and criticism of the statutory provisions; that in the prediction of what the courts and the department will do in the future, the basic as well as the best available data are the provisions of the statute itself, the court decisions, and the rulings of the department. Hence in previous texts, the provisions of the statute, the decisions, regulations, and rulings have been quoted and considered at length in the text. In the present book, the author lays down in the text propositions and principles of his own, which are presumably deduced from sections of the statute or from decisions and rulings set forth or cited in footnotes. In other words, the text is not, in general, a criticism or discussion of the statute or decisions; it is the author's statement of what he believes "the law" to be.

The physical result of this method is, of course, that since the footnotes contain the data for the conclusions of the text, the footnotes are exceedingly lengthy in comparison with the text. But it is of more serious consequence that the method seems to result in easy and uncritical generalizations in the text, which cannot be as valuable to a practitioner as concrete discussions of the particular section of the law or the particular decision which the taxpayer and his counsel in fact have to live and work with. Thus, the author defines a reorganization (p. 200) as "a change in the organization of any enterprise, as a new set of officers, a new arrangement of the business of the company, or new financing." The author then cites Sec. 203 (h) (1) of the law, which is quoted in a note, and which defines a reorganization for purposes of the income tax much more specifically and quite differently from the author. The author's definition is interesting, but it could not be conclusive or even persuasive before the Treasury or the courts in so far as it varies from the wording of the law. Again, the author divides all trusts created by deed into two classes, the second of which is: "Where the trust is created entirely for third parties, in which case there is no distinction between it and a testamentary trust, except in considering the basis for determining gain or loss in the case of the conversion of capital assets"—a statement which is simply not true in view of the provisions of Sec. 219 (g) and (h) appearing on the next page in a note.

The method of treatment further seems to result in a failure to criticize the application or the validity of the provisions of the law, the rulings or the decisions. For example, the author makes no suggestion of the possible unconstitutionality of the provisions for taxing to the grantors of certain revocable trusts income actually paid to other persons (pp. 662-4), nor of the provisions of Sec. 204 (a) (2), making the basis in the case of sales of property by a donee, the cost (or other basis) of the property to the donor (p. 118), dismisses as of no difficulty the question of the liability to tax of income received by employees of proprietary activities of the state (p. 56); and does not apparently realize the difficulties the courts are having in the application of *Irwin* v. *Gavit* to similar cases (p. 693-4).

The arrangement of the book is more surprising than logical. Unlike other standard texts on the subject, the chapters dealing with (1) different sorts of income, and (2) different statutory deductions are not grouped in two separate sequences. The deductions for expenses, contributions, and interest pop out at one from a chapter entitled "Net Income." A chapter on deductions for taxes is followed by one on the geographical source of income, which is followed by one on the deductions for depreciation and obsolescence. In chapter 7 the author begins his discussion of the computation of gain or loss on the sale of property; he digresses to consider different sorts of dividends in chapters 8, 9, and 10, before returning to sales in chapters 11, 13, and 18. Accounting methods whereby the taxpayer discovers whether or not he has any income are considered in chapter 31; the definition of income and its determination in general is back in chapters 1 and 5.

Finally, the index and reference tables are not as comprehensive as those customarily found in texts in this field.

ROSWELL MAGILL.

Columbia Law School.

Federal Income and Estate Tax Laws, Correlated and Annotated. By Walter E. Barton and Carroll W. Browning, Washington, John Byrne & Co. 1926. Pp. xxiv, 707. $15.00. The bare fact that this is the third edition of this book is strong evidence of its utility to the profession. As the title indicates, the authors have arranged the corresponding provisions of income and estate tax laws since 1916 in parallel columns so that the user may have before him in one place in convenient form sections of all the recent laws affecting a particular subject. In addition, the book contains, similarly arranged, the provisions of the acts of 1917, 1918, and 1921 relating to the excess-profits tax; the gift tax provisions of the 1924 and 1926 laws; and the general administrative provisions of the laws since 1916. Finally, the authors have included the sections of the 1926 law relative to the various special and excise taxes; and have reprinted the civil war acts, the 1894, 1909, and 1913 acts imposing income taxes.

The sections printed are annotated by means of digests of applicable court and Board of Tax Appeals decisions. Although these annotations are bound to be incomplete immediately after the book is published, because of the steady flow of new decisions, they will provide something of a check for the practitioner upon the citations of similar materials contained in the services.

The book is well-indexed and cross-referenced. There is no doubt of its value to any lawyer practising in this field.

ROSWELL MAGILL.

Columbia Law School.

Beman, L. T. (Editor) *States Rights.* H. W. Wilson Co. pp. 354. $2.40. This is a manual for debators of the problem of States Rights. The issue is—"Resolved: That the powers of the Federal Government should be enlarged to give it jurisdiction over all matters that concern the whole nation." Briefs or outlines are presented for both sides, followed by a great amount of bibliographical material. Then there are 111 pages of discussion of the general topic by eight different authors, including President Coolidge

and Elihu Root. After this discussion there are about one hundred pages of material favoring the affirmative side and a like number for the negative. The book is not designed for reading but speakers and students will find the materials reprinted and the bibliography of great value.

NEWMAN D. BAKER.

University of Wisconsin.

Mason's United States Code Annotated, 1926, 3 volumes. St. Paul: Citer-Digest Co. Pp. 4496. $45.00. These volumes present the complete text of the new United States code of laws, as adopted by Congress, and also include subsequent legislation. The annotations are based on previous publications of the publishing company, but are redrafted and rearranged to fit into the new scheme. In addition an appendix contains annotations to statutes not included in the codification (such as special and local laws) and to treaties, court rules, etc.

The appendices are followed by tables keying up the new code with the Revised Statutes and the Statutes at Large, as well as with such private publications as the U. S. Compiled Statutes, Federal Statutes Annotated, and Barnes' Federal Code. The index is a very voluminous one. Occasionally one receives the impression that production was somewhat hurried, as, for instance, the sometimes giving, sometimes omitting, of the names of the cases cited. The publishers announce their intention of maintaining a quarterly progressively cumulative service, ending in year books, which are in turn to be finally cumulated at the end of four years.

The Public and the Motion Picture Industry by Wm. M. Seabury. New York: Macmillan & Co. Pp. 340. $2.50. This is the author's thesis: The moving picture industry, from the number of its clients, the frequency with which it touches them, and the extent to which it can exert an influence upon their thoughts and views, is one of the most important social phenomena of the present day. Due to many unfair trade practices, to undue concentration of power in a few hands, and to the growing combination of ownership of producing companies, distributors and chains of theatres, the public is suffering not only through high admission charges but through seeing a steadily deteriorating type of picture. To cure this serious state of affairs two steps must be taken. The first is to secure an act of Congress declaring the industry to be (and thereby making it) a public utility, and, second, to extend to this new utility the terms of the Sherman, Clayton and Federal Trade Commission Acts, and to forbid films having a bad influence. There should also be analogous state legislation. Passing over the question whether the movies are of the transcendent importance assigned to them, the treatment of the law problems is nothing short of surprising, considering the fact that the author is an attorney. That legislative fiat can make a public utility of any business it chooses is a naive view, to say the least. That the three acts mentioned above will only be available as weapons after such a declaration or after some other legislation specifically extending their scope to the motion picture industry, is palpably unsound; the industry is already as much subject to them as any other industry is. But most remarkable is the proposal simply to forbid films with a bad influence. No board of censors, says the author, should be set up; they have no fixed standards, are subject to influence, and are arbitrary. Instead it should be passed on to the courts—let them decide according to their inner wisdom, casting out the bad and blessing the good. Then all will be well, all judges will agree, we will all agree with the judges, and in between judging films no doubt some occasional judge may even find time now and then to hold court. That is, if exposure to good films only still leaves quarrels and litigation a possibility. E. W. PUTTKAMMER.

Leading Articles in Current Law Reviews

California Law Review, March (Berkeley, Calif.)—A Proposed California Statute Compensating Innocent Improvers of Realty, by W. W. Ferrier, Jr.; Jurisdiction of the United States Board of Tax Appeals Under the Revenue Act of 1926, by Dana Latham.

Virginia Law Register, March (Charlottesville, Va.)—John Marshall: Albert J. Beveridge as a Biographer, by Landon C. Bell; The Self-Governing Bar, by W. M. Lile; Blue Laws, Old and New, by Leon Goodman.

Washington Law Review, February (Seattle, Wash.)—The Uniform Sales Act in the State of Washington, by Leslie J. Ayer; Lien of Judgments of United States Courts in Washington, by F. C. Hackman; The Inns of Court, by Frank E. Holman.

The Canadian Bar Review, March (Toronto)—The Validity of Bonuses in Mortgages of Real Estate, by Sidney Smith; Persona Designata, by D. M. Gordon; The Legitimation and Adoption Act, by A. D. Armour; Troublesome Trees, by W. C. Angus.

Marquette Law Review, February (Milwaukee, Wis.)—The Judge's Power to Comment on the Testimony in his Charge to the Jury, by Frank M. Hoyt; Five-Sixth Verdicts in Civil Jury Trials, by H. William Ihrig; Aerial Insurance, by Carl Zollman.

Yale Law Journal, March (New Haven, Conn.)—Rights of Reverter and The Statute Quia Emptores, by W. R. Vance; Payees as Holders in Due Course, by Ralph W. Aigler; Psychiatric Examination of Persons Accused of Crime, by Sheldon Glueck; Convertible Bonds and Stock Purchase Warrants, by A. A. Berle, Jr.; Arbitration Under the Federal Statute, by Wharton Poor.

Harvard Law Review, March (Cambridge, Mass.)—Resulting Trusts Arising Upon the Purchase of Land, by Austin Wakeman Scott; The Relation Between Hearsay and Preserved Memory, by Edmund M. Morgan; A Note on Partnership Liability of Stockholders in Defective Corporations, by Calvert Magruder.

Columbia Law Review, March (New York)—Positivism and the Limits of Idealism in the Law, by Morris R. Cohen; Implied Warranties Under the Uniform Bills of Lading Act, A Discussion, by Walter H. Moses; A Comment, by Samuel Williston; New York Civil Practice Simplified, by Jay Leo Rothschild.

Illinois Law Review, April (Chicago)—Domicile, Double Allegiance, and World Citizenship, by John H. Wigmore; The Gasoline Tax, by Benjamin Wham; Is a Constitutional Convention Impending? by Wayne B. Wheeler.

CALIFORNIA JUDICIAL COUNCIL MAKES FIRST REPORT

THE California Judicial Council, which was created by the adoption of a constitutional amendment at the election in November, 1926, has presented its first report to the Governor and Legislature of the State. This report gives the result of a survey of judicial business in California and makes a number of suggestions for the relief of the situation disclosed. This survey, according to the San Francisco *Recorder*, from which the information in this article is taken for the most part verbatim, "is the first that has been made of the judicial business in California in the seventy-five years of the State's history. As is well said by the Council in its report, any private corporation which waited seventy-five years before taking account of the manner in which it was doing business would soon have no business to take account of."

The survey showed that "on Dec. 31, 1926, more than 1,500 criminal cases and in excess of 42,900 ordinary civil actions (not including divorce, probate, juvenile or miscellaneous proceedings) were still pending in the Superior Court throughout the various counties of the State. Of this 665 criminal cases and 12,534 civil actions were then on the trial calendars of these courts. The balance had not yet been set for trial." It further indicated that, generally speaking, litigation increases in the same ratio as population, and that there is a limit to the amount of business that any group of judges can handle, with the result that where population increases have been abnormal, there is congestion, delay and loss to litigants. Much the same situation was found to exist in the Supreme Court and District Courts of Appeal as in the Superior Court. The total of uncalendared cases in the three Supreme Court districts was 1,358, and in the three districts of the Courts of Appeals was 772, making 2,130 in all. "An examination of these figures," says the report in the San Francisco *Recorder*, "will show that there are 259 appeals in the Sacramento District of the Supreme Court and Third Appellate District and 744 in the San Francisco District of the Supreme Court and First Appellate District, as against 1,332 in the Los Angeles District of the Supreme Court and Second Appellate District, a situation that constrains the Council to recommend a permanent increase in the man power of the Second District Court of Appeal through the creation of an additional division."

Judicial Council's Recommendations

Following are the recommendations of the Judicial Council, based on the information secured by the survey and other data dealing with the administration of justice in California:

"That the Legislature be empowered by constitutional amendment to create additional divisions of the District Court of Appeal as the business of the Court requires;

"That the provisions of the Constitution relating to the jurisdiction of the different courts should be completely revised:

"That the jurisdiction of justices of the peace should be increased so as to relieve the Superior Courts of many trials, thus preventing unnecessary congestion on appeal;

"That the jurisdiction of the District Court of Appeal should be enlarged and that practically all cases at law and many cases in equity should be originally appealed to that court;

"That the time within which a decision of the District Court of Appeal in criminal cases becomes final should be shortened from 30 to 15 days;

"That arbitration, as provided in Assembly Bill No. 460, by Leland Jacobson of San Francisco, which is substantially a copy of the New Jersey Act, should, with amendments in certain particulars, be approved."

The report contains some interesting figures concerning the work of the Municipal Courts of Los Angeles, showing the amount of litigation in those courts, the amount collected in fines, fees and penalties, and other interesting facts. The account in the Recorder goes on to say: "The figures are inserted in the report for the purpose of indicating what may be accomplished if the adoption of the Municipal Court plan were made compulsory in all cities or cities and counties having the requisite (40,000) population.

"The report of the Committee on Revision of Jurisdiction suggests the submission of a constitutional amendment giving the Legislature power to provide, in effect, for municipal courts in cities where there is no municipal court, to fix the jurisdiction thereof and the qualifications of the officers thereof according to population.

"The report points out that the constitutional jurisdiction of the various courts has remained practically unchanged since the adoption of the Constitution of 1879, which practically adopted the jurisdictional provisions of the Constitution of 1849. Such changes as have been made were those rendered necessary by the creation of the District Courts of Appeal in 1904 and of the Municipal Courts in 1924.

"To the fact that there have been no jurisdictional changes is attributed much of the congestion in the trial courts as well as in the appellate courts of the State. The present jurisdiction of the Superior Court, except where Municipal Courts have been established, is of all cases involving $300 and over, while the original appellate jurisdiction of the District Courts of Appeal is restricted to cases involving sums less than $2,000.

General Revision of Jurisdictional Provisions Urged

"In pursuance of the Council's belief that there should be a general revision of the constitutional provisions relating to jurisdiction, amendments to the Constitution have been prepared by the Committee on Revision of Jurisdiction, composed of Mr. Presiding Justice William M. Finch of the Third District Court of Appeal and Superior Judge Peter J. Shields of Sacramento County, which strike out the provision that the Supreme Court shall have jurisdiction of all cases at law where the amount involved exceeds $2,000; enlarges the jurisdiction of the District Courts of Appeal to include all appeals from the Superior Court on all mere money demands and all appeals in cases of removal from office. Concurrent jurisdiction in the Superior and inferior courts is, generally, omitted and certain inconsistencies between the provisions of Section 5 of Article VI and other provisions relative to the jurisdiction of inferior courts are corrected. The present provision for the hearing by District Courts of Appeal of cases in which judgments have been rendered in appellate divisions of the Superior Court has been eliminated, as the effect of such provision would be to slow down rather than speed up justice.

"The Council reports that it has already, by request, presented its views to Governor Young with regard to the procedural changes recommended by the Commission for Reform of Criminal Procedure. As to the changes in substantive rights contained in the amendments to the Constitution advocated by the Commission, the Council, while stating that the amendments if adopted would tend to provide for the State a much more efficient system for the swift and certain administration of criminal justice, declines to express itself, believing that such matters are the prerogative of the Legislature and of the people. The Council does, however, favor the suggestion that the Legislature be empowered to create additional divisions of the District Courts of Appeal as the needs of litigation require and shortening the time in which

a decision of the District Courts of Appeal in criminal cases shall become final from thirty to fifteen days.

"The Council also adverts to the decision of the Supreme Court in the cases of Fay v. District Court of Appeal (73 Cal. Dec. 291) and Landon v. District Court of Appeals (73 Cal. Dec. 306), in which the power of the chairman of the Judicial Council to assign judges of the Superior Court to 'assist courts whose calendars are congested' and to 'sit and hold court therein' is upheld, thus allowing the widest latitude in the exercise of the purposes for which the Council was created, but denying to the District Courts of Appeal the right to set up, with such assigned judges, independent divisions of those tribunals.

"The report also comments upon the whole-hearted cooperation of Superior judges throughout the State with the Council in the matter of assignment to other counties for the purpose of assisting in relieving congestion and to the fact that the unfair situation previously existing in the case of such assignments has been removed by the provision in the Judicial Council amendment for the payment to all judges so assigned, whose salary may be less than that received by the judges whom they are to assist, of the same salary as is paid to the resident judges during the period of their assignment. The Legislature has already provided for the payment of this additional compensation by the State in the case of judges sitting pro tempore in the Supreme Court and District Courts of Appeal and by the State and county to which the assignment is made in the case of Superior judges.

How the Judicial Council Expects to Proceed

"The Council concludes its report with the following declaration:

" 'While the time has come for a bold advance in the administration of the judicial business of this State, such advance should be taken only after due consideration of every matter presented, and in the exercise of a sound judgement. The stability of governmental institutions, especially the courts, must be preserved. The present judicial system of the State has been developed through more than seventy-five years of constitutional construction, legislative enactment, and judicial interpretation. In approaching the consideration and solution of the various problems which will be presented to it, it will be the purpose of the Council to proceed with care, and to reach its conclusions after mature deliberation, acting only when well assured that such conclusions are sound in principle and are just.

" 'The time has been too short for definite conclusions to be reached upon many subjects which are demanding immediate consideration by the Council. This report, therefore, contains but few recommendations. We have felt that the most important matter to engage the attention of the Council was the survey of the condition of business in the several courts as a foundation for future recommendations tending to simplify and improve the administration of justice. Within the biennial period before the Legislature will meet again, the Council will devote itself to the consideration of these problems, and will be prepared at that time to make more definite recommendations to the Governor and the Legislature concerning the business in hand.'

"The Judicial Council was created pursuant to a constitutional amendment initiated by the Commonwealth Club of California, approved by the California Bar Association and adopted by the people November 2, 1926.

"The Council is headed by Mr. Chief Justice William H. Waste, of the Supreme Court, designated in the act as chairman; and is composed of the following justices and judges named by him: Mr. Justice John W. Shenk, of the Supreme Court; Presiding Justices J. F. Tyler, First District; N. P. Conrey, Second District, and William M. Finch, Third District, District Court of Appeals; Superior Judges Walter Perry Johnson, San Francisco, T. W. Harris, Alameda, Harry A. Hollzer, Los Angeles, Peter J. Shields, Sacramento; Municipal Court Judge Harry M. Willis, Los Angeles, W. Cloyd Snyder, Justice of the Peace, South Pasadena.

"The purpose of the Council is to supervise, unify and co-ordinate the work of the courts for the improvement of the administration of justice in California."

KANSAS KU KLUX KLAN OUSTER STANDS

THE U. S. Supreme Court on February 28, 1927, dismissed the writ of error from the Kansas Supreme Court in the case of Knights of the Ku Klux Klan, petitioners in error, vs. State of Kansas, defendant in error. As a result the judgment of ouster against this organization, except as to that part of its operations which constitutes interstate commerce, will not be disturbed. Elaborate briefs were submitted by counsel on both sides in the proceedings before the U. S. Supreme Court, in which various constitutional questions were raised and argued. The decision of the Kansas Supreme Court, which thus stands as the law in that State, is of particular interest not only because of the effort of the State to assert a measure of control over the admission of foreign corporations organized on a non-profit basis, but also because its interpretation of what is "doing business" may have significance in similar proceedings in other jurisdictions. The decision is apparently applicable to a number of other fraternal organizations, but it is likely that compliance with the Kansas statute will not cause them any particular inconvenience.

The action of the U. S. Supreme Court renders a reference to the original decision of the Kansas Supreme Court pertinent. It was rendered on January 10, 1925, and ousted the "defendant corporation . . . from organizing or controlling lodges of the Knights of the Ku Klux Klan in this State and from exercising any of its corporate functions in the State of Kansas, except such as are protected by the interstate commerce clause of the Constitution of the United States." The action was an original proceeding in the Kansas Supreme Court in quo warranto by the State on the relation of Charles B. Griffith, Attorney-General, against the Knights of the Ku Klux Klan and others. It involved the question whether the Klan, a foreign corporation, which was organized under its charter as " a patriotic, secret, social, benevolent order," not for profit, could legally operate in Kansas without first securing authority from the Charter Board; and this involved the question of whether such an organization was "doing business" in the State within the meaning of the terms used in the foreign corporation statute by exercising in the State the various functions authorized in the charter granted by the State of incorporation. As Associate Justice Burch in an opinion concurring specially put it:

"This case presents an interesting question of corporation law. The question is, whether the phrase 'seeking to do business,' and other expressions relating to engaging in business, found in the statute relating to exercise of corporate privilege in this state by foreign corporations, are limited in their application to business in the trade sense of producing, buying, selling, financing, and similar activities for pecuniary profit, or extend broadly to exercise of any corporate function in the achievement of any corporate purpose. To illustrate: From 1893 until 1905, the Red Cross was a corporation of the District of Columbia, and hence a foreign corporation in its relation to this state. In 1905 it was reorganized and reincorporated by Congress, acting under its constitutional power. The foreign corporation statute of this state was passed two years later. If the Red Cross had remained a foreign corporation, it could not, after passage of the statute, have en-

tered this state to mitigate the suffering caused by pestilence, famine, fire, flood, and other calamities, without permission of the charter board, if that work constitutes doing business. The decision of the court is that activity displayed in carrying out corporate purpose is doing business, within the meaning of the statute, and, under the circumstances stated, the Red Cross would have been under necessity, if it desired to avoid liability to ouster, to get a permit to do the work described. Lists have been furnished to the court of incorporated societies, associations, and bodies organized for purposes remote from conduct of business for pecuniary profit, which it is said will be subject to ouster under the interpretation of the statute which the court adopts. This being true, the fact brings into relief the necessity always resting upon the court of rendering decisions which will stand up after the circumstances under which the particular cases originated have been forgotten."

The Kansas Supreme Court appointed a Commissioner who made and reported certain findings of fact as to the character and operations of the "Klan" and also certain findings of law. The court adopted the findings of fact as its own and through Marshall, J. proceeded in its opinion to discuss the questions of law involved. The opinion first considered various decisions recognizing the authority of a State to prescribe the terms and conditions on which foreign corporations may do business within its bounds, so long as those terms and conditions do not conflict in any way with provisions of the Constitution of the United States. It continued:

"In discussing the rights of a foreign corporation to do business in another state, the law makes no distinction between the different classes of corporations, whether aggregate, civil, ecclesiastic, eleemosynary, lay, municipal, private, public, or sole. When organized under the laws of another state, each of these different classes of corporations is a foreign corporation. This rule follows from the principle that the laws of one state can have no extraterritorial force. Subject to minor qualifications, not here necessary to note, the laws of a state cease when the state line is reached.

"Since the Legislature has prescribed the terms on which a foreign corporation may be permitted to do business in this state, such corporations must conform to those terms, unless protected by provisions of the Constitution of the United States; otherwise, they may be ousted from doing business in this state."

The opinion then took up the contention of defendant corporation that it was not "doing business" in the State within the meaning of the State foreign corporation laws. Defendant had argued that to do business, "that must be done which is for pecuniary profit and that our foreign corporation laws apply only to corporations engaged in some kind of commercial, financial or business enterprise, and not to corporations organized for religious, charitable or benevolent purposes." The opinion says:

"Our statute, permitting foreign corporations to operate and to do business in this state, limits the power of foreign corporations to do business to those fields for which a domestic corporation may be formed. R. S. 17—503. Domestic corporations may be created for the support of public worship and for the support of any benevolent, charitable, educational, or missionary enterprise. R. S. 17—202. The business of a corporation organized for the support of public worship or for the support of benevolent, charitable, educational, or missionary undertakings is to support public worship and to support benevolent, charitable, educational, or missionary undertakings. A foreign corporation, when it comes into this state for the purpose of supporting public worship or of supporting a benevolent, charitable, educational, or missionary undertaking, does the business for which a domestic corporation can be organized. One purpose of our statute is to permit foreign corporations to do the same business in this state that a domestic corporation can do, and another purpose is to require the foreign corporation to obtain permission to do the business that a domestic corporation can do."

It then proceeds to quote the general rule given in 14 A. C. J. 1270, to the effect that "when a foreign corporation transacts some substantial part of its ordinary business in a State, it is doing, transacting, carrying on, or engaging in business therein, within the meaning of the statutes under consideration," and adds that "so far as we have been able to ascertain, the courts and law writers in discussing the rights of private corporations to do business in States other than those in which they are organized, make no distinction between those organized for profit and those not organized for profit." A number of declarations of courts in line with the statement of the rule just quoted from Corpus Juris are then quoted and considered. Among these are Knights of the Ku Klux Klan vs. Commonwealth (Va.), 122 S. E. 122, in which it was said:

"Whether or not the Knights of the Ku Klux Klan, a corporation chartered under the laws of the state of Georgia, is required to comply with the statutes applicable to foreign corporations desiring to do business or exercise their corporate functions in this state, is the question here involved. . .

"It seems to us that the mere recital of the fact that the appellant is a Georgia corporation is sufficient to sustain the conclusion of the commission, for the language of the inhibiting statutes seems too plain to require any interpretation. The Constitution precludes foreign corporations from exercising their functions in this state, except upon compliance with the laws of the state, and expressly authorizes the General Assembly to discriminate against foreign corporations if it is deemed expedient. That the General Assembly may exclude foreign corporations from exercising their corporate functions within this state, subject only to the inhibitions of the federal Constitution, is everywhere conceded. It is claimed here, however, by the appellant, that the state has neither exercised this undoubted power nor imposed any conditions or restrictions upon corporations of this class, and the supporting argument is chiefly based upon the contention that the words 'doing business' cannot be applied to a corporation which claims to be organized for patriotic and benevolent purposes."

Then follows a description of the manner in which the Knights of the Ku Klux Klan operate and the purposes for which they operated, the same as is shown in the findings of the Commissioner in the present action. Then this language follows:

"From these conceded facts it is perfectly apparent that the corporation is exercising its functions and powers within this state. The claim is, however, that the words 'doing business' have reference to the exercise of some commercial, manufacturing, or other function, and that the state has only intended to exclude corporations of this character. We find nothing in the Virginia statutes to justify such a limitation upon the language used."

The opinion concluded from all this that the Klan was "doing business" in the State within the meaning of its foreign corporation law. It then took up the contention that the transactions of the Klan with citizens of the State were interstate commerce and therefore free from State regulation, and reached the conclusion: "While the sale of lodge paraphernalia, insignia and supplies by the defendant corporation to subordinate lodges in this State is interstate commerce, the ownership of the paraphernalia, insignia and supplies, after they arrive in this State is not interstate commerce, neither is the organization nor control of lodges of the Knights of the Ku Klux Klan within this State interstate commerce." From which came as a matter of course the exception in the ouster of such corporate functions as were protected by the interstate commerce clause of the Constitution of the United States.

In the proceedings before the United States Supreme Court the plaintiff in error assigned as error the ruling of the court below that the Klan was "doing business" in the State, and made other assignments going to the jurisdiction of the court below and

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ONE USE OF LEGAL HISTORY

We have the honor of having in the country at this time a distinguished historian of English law, and on another page of this issue we give a brief account of the first reception which was given him by the Bar. Prof. Holdsworth's work is indeed monumental—not in the mortuary sense which Dean Wigmore said was too generally attached to the word—but in the sense of permanent and great achievement.

We see here the large part which the history of law fills in the general history of a country. It seems at times almost a gigantic framework which needs only the addition of social details here and there to be a history of the country itself. In a sense it may be the record of a special science and the development of a separate profession, but it touches life at so many points that it is inevitably more than this. We see in this record the conflict of the great antagonist principles that fill the wider stage of general history: nationalism and feudalism, servitude and freedom, absolutism and popular rights in government. We see the common law throw away the jewel of equitable ideas which it had in earlier days and become rigid and formal, provoking the inevitable reaction. Great systems of law contend with each other as on a vast arena, and the issue is not by any means too certain at times. But the tough old common law, worshipped by the profession as only the expert worships his specialty, and with its powerful appeal to popular feelings, finally triumphs and takes on new additions to meet new needs. Equity grows, defines its principles, establishes itself firmly. And from time to time the forms of heroes emerge and stand clearly forth—fighters like Coke, great characters like Hale, intellectual giants like Bacon.

It is a fascinating story and may well be read for more than one reason. Aside from a knowledge of the growth and development of legal principles and institutions, which is of course the matter of first importance to the lawyer, the reading of such a history of the law conduces to breadth of opinion. It enables one better to realize that there is perhaps another side in the contests of our day by showing clearly that many of the things which seem now conclusively settled on the only possible basis of reason and right were at one time really debatable questions. It raises a warning sign against the dogmatic crystallizations of opinion which pass current on many subjects and which, as has been aptly said, "become fixed opinions and tend to ossify the organs of thought."

The history of our distinguished visitor abounds in this sort of instruction which tends to make the intelligent lawyer who reads it "more than a mere lawyer," to use his own phrase. For instance, due to the subsequent course of political history and the triumph of those liberal and constitutional principles which we feel to be essentially right, scant respect is generally paid to the attitude and principles of those lawyers who in Stuart times defended the prerogative as against the growing assertion of power by Parliament. And yet, no matter what one may think of it from the standpoint of political science, from the legal standpoint, as Prof. Holdsworth points out, there were plenty of arguments on the side of the King. The limits of the prerogative were by no means clear and neither side was without its appeal to the legal principles recognized in the past. A lawyer who was simply a lawyer might certainly, without any imputation to his discredit, take the position that the law sanctioned assertions of royal power which other lawyers as stoutly denied.

Moreover, from the standpoint of mere statesmanship, there was something to be said on the now unpopular side. We are accustomed to think of the prerogative side as being distinctly reactionary and of the Parliamentary side, to which of course the vast majority of the common lawyers were allied, as the party of the future, the men with the forward look. In a sense this is true. But it need not be forgotten that at the time those who favored the larger administrative powers for the King were in line

with what were regarded as advanced ideas of governmental efficiency on the continent, while the appeal of the common lawyers was to the past, to the sufficiency of traditional law and methods for the settlement of practically all problems that might arise. In brief, the upholders of the larger prerogative were men who felt that the government ought to be allowed to do things it thought necessary without legislative interference—a type which is far from extinct in our own day.

Again mediaevalism, for one reason and another, has become synonymous with wrong ideas to many people. And yet, as the author points out, in spite of the crudity of means, the failure of many efforts and the shortsightedness of men, the central ideal of the period and for a while after was an ethical one. Political and economic sciences had not developed to a point where they seemed to supply principles of law and legislation capable of supplanting simple ethical standards of right and wrong. They thought as a matter of course in those days that the laborer was entitled to a just wage, and government did what it could to see that he got it. But he was not entitled to more, and government likewise acted on that principle. People were entitled to food at reasonable prices, and government did not hesitate to do what it could to insure it. And so through other ranges of human activities. Prof. Holdsworth does not hesitate to contrast this ethical ideal of earlier times with the "laissez faire" principles which triumphed later, to the disadvantage of the latter. Certainly we can see today in the attitude of government to the problems of workmen's compensation, minimum wages and the like, a suggestion of at least a partial return to a more ethical standard of legislation.

Many other things are seen in a different light when considered in relation to their historical conditions. Someone has said that most wrongs are merely rights which have been permitted to live too long, and the classical example of this is slavery, which has been described as a step on the road to freedom, and which was certainly an advance over the primitive habit of killing captives taken in war or raids. The history of English law affords interesting illustrations of this generalization. Feudalism was an excellent method of solving the problems of tenure under the warlike conditions of the time. Only later did it become a ridiculous and useless survival. Status, presumably antagonistic to modern ideas and yet so deeply rooted in human nature that we see its recrudescence in various forms today, afforded some guarantee of rights in a time when no rights were too secure. Primogeniture was logical and not unjust under feudalism. The ordeal of battle was a far-sighted advance on the earlier custom of blood feud between groups of relatives, and it had the advantage of satisfying to some extent the human instincts in a quarrelsome age. Proof by compurgation was not without its value in that age of faith when things which came before the courts were generally known. Formalism afforded a definite method of procedure at least, and this was not only in accord with primitive ideas but also furnished real remedies which tended to multiply. Technicalities played their part in alleviation where the law was too harsh. The origin of the demurrer and all the complexity of the system of common law pleadings, was to prevent if possible the resort to arms in the ordeal of battle. And so on through a longer list of rights which grew into wrongs by lingering too long upon the stage.

So much for the legal reader. It is to be hoped that a way may be found to broaden the view of the general public by bringing clearly to its attention the part which lawyers have played in securing the rights which they cherish—a part which is set out so convincingly in this work. The author says somewhere that English lawyers have not claimed the credit to which they are entitled for the part they have played in English history. Certainly the triumph of Parliament over prerogative, the establishment of principles of free government as we know them, are to a large extent the work of the lawyers. It was the lawyers in Parliament who helped it to secure rules and methods of procedure by which to make itself effective. It was the lawyers, Coke in the forefront of course during the crucial period, who furnished that arsenal of argument in the way of appeals to law and tradition which was needed to counterbalance the influence of the other side. Had it not been for this alliance between Parliament and the common lawyer the course of English and American constitutional history might have been vastly different. And the part which American lawyers have played in helping create and maintain our own institutions is no less worthy of attention.

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A COMPARATIVE LAWYER OF THE NINETEENTH CENTURY

By Charles Sumner Lobingier*

THE science of Comparative Law is not an old one. The comparative method had been applied in the biological sciences—*e.g.* comparative anatomy—and later in historical and institutional research, long before it ever reached the realm of private law. Especially in the United States, where knowledge of one legal system has so generally been deemed sufficient, is comparative law a late arrival.

Yet we have had comparative lawyers from an early period. Joseph Story (1779-1845) and James Kent (1763-1847), besides being learned in the common law, were also civilians of no merely superficial attainments and each was prone to fortify his propositions, both in judicial opinion and legal treatise, by appeal to the civil law. Edward Livingston (1764-1836), whom Sir Henry Maine[1] called "the first legal genius of modern times" was another who mastered both systems and he left a monument to his proficiency, in each, in the codes[2] which he drafted and helped to draft for the new Franco-American state of Louisiana.

But more profound even than the first two, in his knowledge of the Civil Law, and certainly more distinguished than any of them as a practitioner of the common law, was Albert Pike (1809-1891) whose preeminence in these fields has been largely forgotten by the present generation. This is partly because of the later absorption of his energies in other pursuits and the eclipse of his legal reputation by achievements therein, and partly because of his own failure to punish the results of his labors. Now, a generation after his death, it would seem that the time has come to recognize and reclaim Pike as a comparative lawyer.

In law, as in other lines, he was largely self taught. Born in Boston, his parents removed in his childhood to Newburyport where one of the first incidents he remembered was "court week."

"Rufus Choate came up there and tried a case," he says[3]; "it was the case of a common sailor. I heard the speech and recollect his looks very well, and what a brilliant speech he made! He was a young lawyer then. I also heard Leverett Saltonstall at the same time. I knew him very well. He was a great student. I have seen his light in the window far into the night."

Pike also remembered as a leading lawyer of the town, Caleb Cushing, afterward Federal Attorney General and a noted diplomat and, in the following passage from Pike's address[4] at the Supreme Court Memorial Services for Cushing, doubtless reveals a source of inspiration to his own career:

"I knew Mr. Cushing when I was a boy. He was a young lawyer then, resolute to win success; and often passing his office, as I did, late at night, I always saw it lighted up. He lost few hours in sleep, and wasted none in dissipation or amusement. To that untiring industry and diligent study he owed the fame of after years. He accoutred himself, carefully and thoroughly, for the business and the battle of life, and entered the arena armed at all points."

Yet Pike never studied law under Cushing nor even in Massachusetts. After taking the examination and entering the Freshman Class at Harvard College, he left at the age of twenty-one for the Southwest, ending his journey in Arkansas where he taught school and then was called to the capital city to take a position on its leading newspaper. The story of his preparation and his early professional experiences may best be told in his own words:

"The territorial legislature was in session, when I reached Little Rock in October, and I was a few days after elected Assistant Secretary of the Council, and served as such until the end of the session."[5]

"I went to work then and read law"[6] . . . learning to set type and editing, and at intervals reading the first volume of Blackstone, until October, 1834. That winter, when I had read only the first volume, Judge Thomas J. Lacy, of the territorial superior court, gave me a license to practice law, saying it was not like giving a medical diploma, because as a lawyer I could not take one's life."[7]

The impression of superficiality which this account produces becomes considerably lessened when we learn that Pike had previously been invited to address[8] the Arkansas Bar Association and that he had read before it a paper covering eighteen printed pages, whose contents would not suffer by comparison with most Bar Association addresses of the present day. He there modestly confesses:

"An humble student, I am yet without the portals, or at least only upon the threshold, of the great temple of jurisprudence. A neophyte, yet serving my probation, I have hardly earned the spurs of legal knighthood. I shall content myself, therefore, with viewing at a distance, the vast proportions of the edifice, without undertaking to enter in and explore its labyrinthine intricacies."

Yet as he proceeded it appeared that he had entered a considerable distance. For he began with a quotation from Lord Bacon and then presented these opposing views of his subject:

"While, by some, the common law has been eulogized as the perfection of human reason as embodying every necessary rule of human conduct, and needing not the aid of any principles drawn from foreign sources, others with less reason, have stigmatized it as an unseemly, incongruous, heterogeneous structure, a mass of monstrous absurdity, a vast idol, like the Dalai Lama, shrouded in darkness, and wrapped in eternal mystery, and depending for its very existence upon the blind faith and insensate devotion of its worshippers."

And it was surely no "neophyte" who wrote as follows of the now much vaunted *fontes* of the common law:

"In reading the different books of reports, we must bear in mind the sturdy independence, the bitter prejudices, the inveterate hostility to foreign law, the fierce resentments, of Coke; the intellectual greatness and integrity of Hobart; the lowbreeding and meanness of Saunders, who bore for the motto on his ring, 'principi sic plausit,' and was elevated to the bench to pander to the purposes of the king; the ardent temperament of Buller; the dissolute habits, ferocity, profaneness of Thurlow; the purity and conscientiousness of Hale; the originality and genius of Holt; the elegant manners and varied learning of Mansfield; the venerable dignity of Kenyon, and the great learning and incessant doubts of Eldon; and in this

 Address before Bar Assoc. at Cedar Rapids, Iowa, April 30, 1927.

1. Cambridge Essays (1856), 17.
2. He not only assisted in drafting the Civil Codes of 1808 and 1825 but prepared other codes of his own, not all of which were adopted in Louisiana.
3. MS. Reminiscences (1886), 4.
4. Cushing Memorial Services (Washington, 1879), 8.
5. Hallum, Biographical & Pictorial History of Arkansas (Albany, 1887), 216.
6. MS. Reminiscences, 24.
7. Hallum, 216.
8. The address was reprinted in Ark. Bar Ass'n. Proc. 1825, pp. 127-142. The date there assigned to it is July 13, 1830; but at that time Pike had not left New England. In fact he did not reach Little Rock until October, 1833. While, therefore, the paper is undoubtedly Pike's, it must have been read after the last named date.

country, the conservative principles, the lofty tone of morals, and the vast comprehension of Marshall, and the extreme simplicity and goodness of heart, joined to the extensive knowledge and varied research, of Story and Kent."

Note again this ambitious program of preparation:

"The thorough lawyer in this country, combining as he does in himself the functions of attorney, counselor, solicitor, and advocate, must enter far into the field of science, and drink deep the perennial fountain of general knowledge. On the one hand, the broad realms of the Common Law are to be explored, until every nook and corner is as familiar to his mind as the field and homestead of his boyhood to his eye. He will there see the enlightened sages of English and American jurisprudence, expounding with stern dignity, bold independence, and comprehensive justice, the principles of law and equity, in defiance alike of monarchical prerogative and popular clamor.

"On the other hand lie the broad domains of equity, illuminated by a succession of chancellors fully equal in every respect to the common law judges, and whose learning was rivalled only by their integrity.

"Nor is this all that is to be investigated. The lawyer must also be familiar with the international and admiralty law, and with the jurisprudence of the Romans, by which for long ages a great part of the civilized world has been governed."

It must be remembered also that Pike was a youth of poetic genius and culture even before he left New England and to him, through life, the observation applied *Nullum quod tetigit non ornavit.*

His very unusual production, therefore, probably did not surprise those who knew him and his recognized attainments may have had not a little to do with his apparently easy entrance to the bar. He then formed a partnership with a lawyer named Cummins (whose given name is variously stated as William and Ebenezer) and a recent letter from Chief Justice McCullough of the Arkansas Supreme Court informs us that:

"The firm of Cummins & Pike did a very large practice and their names appear frequently in the reports of the Supreme Court as counsel."

Pike admits that he "didn't know how to write a pleading then" but says that he "studied pretty hard" and "began travelling the circuit pretty soon."

"The first court that I attended" he continues,[9] "was a territorial court, held at Columbia, Chicot county, by Judge Thomas J. Lacy; and the next was at Helena, also held by him. . . . I was my own teacher in the law; soon began to get together a law library, and in 1839, began to purchase other books, and to read them, never sleeping more than five or six hours of the twenty-four, which was indeed my rule for forty years. In 1840 I was elected attorney of the Real Estate Bank, and in 1842 of its trustees, holding the two offices in succession during some twelve years. . . . I practiced at Little Rock, in Chicot county, at Helena (When John B. Floyd, though a planter, also practiced there), at the courts in Conway, Johnson, Pope and Crawford counties, and beginning a few years later in Saline, Clark, Hempstead and Lafayette; and still later in Dallas, Ouachita and Union, riding the circuit on horseback twice a year for some ten years, and afterward traveling in a buggy; of course I also practiced in the supreme court of the State, and the district and circuit courts of the United States at Little Rock; and in 1849 I was admitted to the bar of the supreme court of the United States, and afterward practiced there. Abraham Lincoln and Hannibal Hamlin were admitted to the bar of that court at same time with myself."

Meanwhile, however, Pike's activities covered a wider range than the routine practice of law; for he found time for additional studies and for the beginnings of his legal, literary work.[10] He edited the first five volumes of the Arkansas Supreme Court reports, covering the period from 1837 to 1844 and in the first named year he prepared the annotations and index to the Revised Statutes. In 1842 he published "The Arkansas Form Book, containing a large variety of legal forms and instruments, adapted to popular wants and professional use, in the State of Arkansas, with a summary of the principles of law, of most ordinary application." A copy of this rare and interesting little volume has just been presented to the writer by Charles E. Rosenbaum of Little Rock, where it was published in 1842.

Pike's real destination in the southwest was Louisiana and it was the merest accident[11] which had diverted his course to Arkansas. But the town of New Orleans with its Latin-American population and atmosphere persisted in its appeal to Pike's romantic and cosmopolitan temperament. A visit of his there as early as the middle of the century was thus described fifty years later by a life long friend:

"In the year 1850 I met him at a dinner party given in his honour by a well-known citizen of New Orleans. When introduced to Pike, I was struck with admiration of his noble and commanding appearance, and his strong, intelligent and pleasant countenance. His manner was affable and courteous, and after dinner he was requested to give some accounts of the country through which he had been traveling in the Far West. He narrated many incidents and happenings of his long journey, but in a very quiet and modest manner, speaking more of the acts and doings of his companions than of himself, and won thereby the admiration of all present, and certainly made a deep and lasting impression upon me."[12]

So, "in 1851 or 1852," he tells us,[13] "I determined to exchange the practice in Arkansas for that in Louisiana."

II

PIKE THE CIVILIAN

At New Orleans, Pike found himself in a jurisdiction where the Civil Law had prevailed, tho not always in the same form, from its original settlement. As the first settlers were French, they naturally brought with them the *Coutume de Paris;* but when, in 1763, the sovereignty of the country was transferred to Spain, the Spanish Law was introduced and during the subsequent forty years became the prevailing one. Accordingly the report of the territorial commission, appointed in 1805 to draft a System of Civil Law, embodied one which "in its leading characteristics remained largely the Spanish law" and "became the Civil Code of 1808."[14] Meanwhile, however, the French law had been codified in Napoleon's famous instrument and while nothing more than the project of it was available to the framers of the Louisiana Code of 1808, copies, accompanied by "splendid commentaries" were received from France and the trend was now toward the French form of the Civil Law; so that when a new Louisiana Code was enacted in 1825, it was modelled upon, and largely drawn from, the Code Napoleon.

It does not appear that Pike had ever given special attention to the Spanish language and literature; tho in his first published work[15] there are tales and ballads which contain not a little Spanish. But in both French and Latin he had been proficient (tho here largely again self taught) and both stood him well in hand in his new forum. He first

"Proceeded to purchase the Pandects and the civil law books, Latin and French, and to study them; my first necessity being to learn both languages over again, for in twenty years' disuse I had become unable to read either. I was then in partnership with Ebenezer Cummins, and this partnership ceased in 1853, when I transferred my office to New Orleans

9. Hallum, 217, 218.

10. See Boyden, Bibliography of Pike's Writings (Washington, 1921) containing eleven pages of titles of productions relating to law.

11. The trading party which he had accompanied from Independence, Mo., to New Mexico, took the wrong road in returning. MS. Reminiscences, 21.

12. S. M. Todd, Trans. Sup. Coun., 1899, p. 391.

13. Hallum, 219. Cf. MS. Reminiscences, 58.

14. Cross, Eclecticism of the Law of Louisiana, American Law Rev., LV, 410.

15. Prose, Sketches and Poems, Written in the Western Country (Boston, 1834). See "A Mi Señora," 198.

and formed a partnership with Logan Hunton. It was required then that an applicant for admission to the bar of the supreme court should be first examined by a committee, and then in open court. In the former, the examination in regard to the civil law consisted of the one question, put by the venerable old French jurist (I cannot recollect his name), who was the representative of that law on the committee: 'What works have you read on the Roman law?' I answered: 'I have read the Pandects and made a translation into English in writing of the first book.' He was perfectly satisfied with this, and it was true. I had also read the twenty-two volumes of Duranton, several volumes of Pothier, the five volumes of Marcadé (the highest authority of all—higher than all the courts of France—and out of sight the most admirable of all writers of the law) and other works."[16]

With such an ample preparation and with the necessity of becoming familiar with the Louisiana Civil Code, it is not strange that Pike, with his highly developed literary bent, soon found himself producing a commentary on that instrument and his autograph copy thereof has been preserved for us.[17] It is a little volume of somewhat less than three hundred manuscript pages, written in Pike's fine hand and consisting of abstracts of the opinions of the French jurisconsults and of the decisions of courts, arranged under the appropriate article of the Code to which the subject matter relates. On the title page is written, "Notes on the Civil Code of Louisiana, made by Albert Pike in 1855, at New Orleans." Since it was written, that code has been revised but enough of the former edition has been retained to make Pike's annotations of inestimable value to the Louisiana lawyer of today. But his efforts in that field were not confined to annotations. In his work on the "Maxims," which will be discussed later, he includes the following historical resume[18] of the French Law:

"We distinguish in France the old law, the intermediate law, and the new law. The old law comprises the laws which ruled our country until the declaration of the Constituant Assembly, of 17 June, 1789. The laws which followed this Declaration, and were enacted from that period of June 1789, until the promulgation of the Civil Code, so modified the old law, without entirely abrogating it, that they are regarded as forming a distinct law, which is termed the intermediate law. Finally, this intermediate law, as well as the old law, were abrogated, as a general rule, at least, and saving some exceptions, by the law of 21 March, 1804, (30 Ventose, year XII), the period at which the present law begins.

"VIII—17. Before the Revolution, which came at the close of the last century, to work for us so many and so grave changes, the Realm of France, composed of divers Provinces which formed, as it were, so many distinct Nations, did not and could not offer that uniformity of legislation which is so much admired today.

"Then, two sources of the law were distinguished; the Authority of the Prince, and Custom. And neither the one nor the other could produce unity of legislation.

"The laws promulgated by the King, under the name of Ordonnances, Edicts, Letters-patent, were, it is true, in terms obligatory for the whole Realm; but their execution within the jurisdiction of each Parliament being subordinated to their registration, and the Parliaments sometimes refusing to register, it resulted therefrom that many Royal Laws, enforced in some Provinces were not so in others, which, in their turn had accepted laws rejected by the former. In this first respect then, there was not uniformity.

"On the other hand, it was in the Customs that was found the Complement, or, to speak more properly, the principal part, of the legislation, of which the laws that emanated from the Prince formed but an inconsiderable fraction; and there the want of uniformity was still more strongly marked.

"18. There was then a distinction between the *general* Customs and the *local* Customs. The former, to the number of about sixty, were those followed by a whole Province or a considerable portion of a Province: those were called local, that were applied only in a single locality, a city, a burgh, sometimes a single hamlet. The local Customs of a certain importance were in number over three hundred.

"In certain Provinces, the Roman Law supplied the place of general Custom: there were others that had a general custom proper, but in which the cases not provided for by the Custom had to be decided by the Roman law. Both were called *Countries of the Written law.* Those were called *Customary Countries*, where the Roman Law, without having the force of law, was only regarded as written reason, as it still is today.

"IX—19. It required nothing less than a commotion as great as that of 1789, to make possible the reform which our ancient French legislation demanded. The changes which, at that period, the political organization of the country underwent, having caused the obstacles to disappear which had until then been opposed to uniformity in this legislation, the Constituant Assembly ordered that there should be framed a body of Civil laws common to the whole Realm. (Constitution of the 3rd Setember 1791.) But before the realization of this project, there were enacted by the different legislative assemblies, a great number of laws, which seriously derogated from the Royal laws, the Roman law and the Customs. It is these laws which, with so much of the old law as they did not abrogate, form the *intermediate law.*

"X—20. Twelve years had elapsed, from the time when the Constituant Assembly had ordered the framing of a body of civil laws, when from the 5th of March, 1803, to the 20th March, 1804, (from the 14th Ventose, year XI to the 29th Ventose, year XII) was at length decreed a series of law, the aggregation whereof, under the title of *Civil Code of the French*, was ordered by the law of the 21st of the same month of March, 1804 (30 Ventose, year XI). It is not unprofitable to know by what labours the formation of these laws was attained.

"21. From the beginning of the year 1800, many projects of the Civil Code had been published. On the 12th of August of that year, a decree of the consuls appointed the citizens *Tronchet, Portalis, Bigot de Preameneau* and *Maleville* to examine these different projects, and of all of them to frame a single one. That which they drew up was printed in January 1801, and referred to the Tribunal of Cassation and the Tribunals of Appeal, (now the Court of Cassation and the Courts of Appeal), which examined it, and appended their observations. Seven months later, in the month of July, the discussion upon it began in the Council of State. It was conducted as follows:

"Each of the projects of law, composing the work of the four jurisconsults named above, was in the first place examined by the Section of Legislation, and then distributed to all the Councillors, who discussed it in general meeting. When settled, the project was officially communicated to the Tribunate, which in its turn discussed it and added its observations. The modifications suggested by the observations of the Tribunate were, as the project itself had been, first examined by the Section of Legislation, and then by the entire Council of State.

"22. It was after these several processes, that the draft of each of the projects of law destined to compose the Code was definitively decreed. Then all were in succession proposed by the Government, voted on by the Tribunate after official presentation, then decreed by the Corps Legislatif, according to the provisions of the Constitution of the 13th December 1799 (23 Frimaire, year VIII). The project last decreed, that on *Compromises*, was decreed on the 20th of March 1804, and on the next day was passed the law above mentioned, which ordained:

"1. The assemblage of all the laws decreed, into a single body, under the title *Civil Code of the French*, in the order wherein they now stand in the Code, which is somewhat different from that in which they had been decreed.

"2. The division of this Code into a *Preliminary* title, and into three *Books*, each of which should be divided into as many *titles* as it included laws.

"3. Finally a single series of numbers for all the Articles of the Code.

"For the rest, the same law declares that this new action does not prevent the respective laws, united to form the Code, from continuing executory from the date of the particular promulgation of each. Finally, it pronounces the abrogation of the Roman Laws, the Ordinances and the Customs. So then, dating from the 21st of March, 1804, France had at length a body of uniform laws, truly National, and which, in despite of obscurities, omissions, vices of arrangement and sometimes in the matter itself, will be always and with reason regarded as one of the noblest works ever executed by man.

"XI—23. For the rest, it is not in our Civil Code alone that all of our actual private law is found. It is written: 1, in the *Civil Code* and many subsequent laws, which have per-

16. Hallum's, Biographical and Pictorial History of Arkansas, I, 219.

17. In the Pike Collection of Scottish Rite Supreme Council's Library at Washington.

18. Based on Marcadé's *Explication du Code Napoleon.*

fected or modified some of its dispositions; 2, in the *Code of Commerce*, which regulates the relations of merchants, in so far as merchants, whether between themselves or between them and persons not merchants; 3, in the *Code of Civil Procedure*, which regulates the mode of exercising the faculties which the private law confers upon us.

"As to our Public Law, it is written in the Constitution, in the Administrative laws, the collection whereof is termed *Administrative Law;* and, finally, for the Criminal law, which is equally a part of the Public Law, in the *Code d'instruction Criminelle* and the *Penal Code*. It is useless to say that an international law is found in the Treaties negotiated between France and foreign powers. The title of our work is sufficient indication that we only propose to ourselves here to study the Civil law properly so called and distinct, therefore, from the Commercial law and that of Procedure; that is to say, the law which results from the Civil Code and the subsequent laws relating to the matters with which that Code deals.

"XII—24. Let us end this introduction by a remark which is not without importance. It is, that the words *Civil Code, Civil Law, Civil laws*, in the acceptation which usage has given them among us, and which we must now continue to leave to them, are singularly diverted from their logical meaning, and applied in a sense doubly vicious.

"*Droit Civil, Jus Civile*, should signify the law of the *Citizens, Jus Civium*. But it is not only the Citizens who enjoy among us what we call the Civil Law: women as well as men, minors as well as majors, have the benefit of the Civil law, though women and minors are not Citizens. At Rome, where *Citizen* meant every person belonging to the Roman City, every individual who formed a part of the Roman people, the Civil Law was justly so styled: it was the law of the Romans. But from the moment when the word *Citizen, Civis*, ceased to be taken in this wide sense which embraces the whole of a nation, the law which belongs to the whole nation should have ceased to be styled *jus civile*. Here, as every where, routine has been permitted to mislead, and the same words have been preserved after the things have changed.

"But even if all the French were Citizens, as all the Romans were; even if this word *Citizen* properly applied to all the members, male or not, majors or not, of the nation, the expression *Civil Code*, or *Civil Law*, or *Loi Civile*, would not be less improper, for yet another cause. In effect, it would then signify the Code *of the French*, the law of *the French;* but the Penal Code, the Code of Commerce and the rest, our administrative laws, &c., are Codes of the French, laws of the French, in the same manner and to the same degree as the Code to which the name *Civil* has been reserved. . . . It would be, in that case, the whole of our laws, which should be called *Civil Law*, as at Rome *Jus Civile* meant the whole law of the Romans.

"The result is, that *Civil Code* is found to mean, among us; *Code of the theory of the general private law*.—Code of *the Theory*, in contradistinction to the Code of Procedure, which organizes the practice of this same private law;—*of the private law*, in contradistinction to the laws, Constitutional, Administrative, Criminal and others, which constitute our public law;—of the *general, ordinary* private law, in contradistinction to the Code of Commerce, which contains the private law peculiar to merchants.

"25. Published in 1804, under the title of *Civil Code of the French*, this Code received, three years subsequently, after the advent of the First Consul to the Empire, and in virtue of the 3d September, 1807, the name of *Code Napoleon*, and a new revision, having for its principal object to make its text agree with the new political state of things. We are not to suppose, moreover, that this new title was solely due to a base sentiment of adulation, and had no reasonable motive. It is incontestable that the First Consul took a very active art in the making of the Code, that the influence of his genius made itself felt in it in more than one part, and that if it still contains many faults, it would have contained very many more, without the presence of Napoleon at the discussions in the Council of State.

"Upon the downfall of the Empire, the force of things produced a new change. Article 68 of the charter of 1814, (which became Article 59 of that of 1830), restored to the Code the name *Civil Code*, without more; and an Ordonnance of 30 August, 1816, uttered in execution of the 17th of July preceding, published a third edition, in harmony with the government of the realm.

"Despite the Revolution of 1848, and long as the Republic has already existed, there has not as yet been a new edition, and as the text of that of 1804 would not be found exact, (since, for example, the members of the public service, instead of resuming the old denomination of *Commissioners of the Government*, are now styled *Procureurs of the Republic*), we have had to follow the text of the Royal Edition, modifying it, however, when circumstances have required.

"It is plain, for the rest, how important it would be to adhere to denominations independent of the forms of government. Thus, our Superior Tribunals always ought to be, and always should have been called Tribunals or Courts *of Appeal* and never *Royal* Courts or *Imperial* Courts. Have these Tribunals anything more Royal or more Imperial, in respect to the cases, than the Justices of the Peace, than Tribunals of the first instance, than the Court of Cassation itself? . . . So also the members of the body of public prosecutors ought always to be styled Commissioners or Attorneys *of the government*, whether the government is Royal, Imperial or Republican."

While Pike's experience at the Louisiana bar was not a lengthy one, it and its preparation bore fruit later.

"I was engaged in the practice in New Orleans three seasons," he says,[19] "but then abandoned it, because Indian claims which I was prosecuting compelled me to be in Washington the whole of the winters of 1855 and 1856, and prevented my attending the courts in New Orleans during the larger part of each season."

But, he continues[20]

"I may add here that I never have lost my fondness for the Roman Law; and that after I came to Washington, in 1868 to reside, I commenced, and with the labor of some years completed, a work concerning all the maxims of the Roman and French Law, with the comments upon them of the French courts in text writers, and of the Pandects. It would make three volumes of goodly size; but it remains, with other unpublished works of mine, in the library of the Supreme Council, because it would not pay a book-seller to publish such a book; and I have had since the war, no means wherewith to publish it for myself."

This was the most ambitious of Pike's undertakings in the field of legal literature and, had it been published, would have placed him in the front rank of American writers on Civil Law. While he seems to have remembered it as "commenced" after 1868, the following excerpt from one of his productions during his residence in New Orleans, indicates that he had begun to study the subject much earlier:

"The rule *qui dicit de uno, negat de altero* is of the Civil Law which its writers declare to be dangerous and to be distrusted. 'Its application should be made with great circumspection' they say."[21]

His directions to the printer (for, in spite of his apparent hopelessness, he evidently intended publication) are dated June 15, 1876; so that for upwards of twenty years he had been gathering material for this work. At the time of its completion there were at least three works[22] on Common Law Maxims; but no one seems to have attempted a collection of those of the older system, altho a recent writer[23] tells us:

"Ancient jurists were as prone as modern ones to frame the reasons for their conclusions in broad general terms and to give to these terms a certain ethical elevation. So there are three famous maxims which we find first in Ulpian and later in Justinian's Institutes, honeste vivere, alterum non laedere, and suum cuique tribuere, which may be translated 'To live honorably'; 'Not to injure another' and 'To grant each man his due.' The maxims are famous because many men read the Institutes who read nothing else of Roman Law, and because they have seemed ready texts for the reproaches that laymen have always made against the practice of lawyers."

The title of Pike's work is "Maxims of the Roman Law and Some of the Ancient French Law, as Expounded and applied in Doctrine and Jurisprudence." In thus placing the authority of the commentator before that of the judge, Pike adheres to the spirit of the Civil Law; but in selecting his sources he does not confine himself to that law; his method is that of the

19. Hallum, I, 221. Cf. MS. Reminiscences, 58.
20. Hallum, 219, 220.
21. Arkansas, Grand Lodge Proc. (1854), App. 127.
22. Noy, Maxims (9th ed., 1821, Am. ed. 1870); Broom, Legal Maxims (8th Am. ed. 1882); Barton, Maxims (1881).
23. Radin, Fundamental Concepts of the Roman Law, Cal. Law Rev. XII, 394.

comparative jurist. Thus he quotes first Coke's definition of a maxim and then the following from Paulus:

"A maxim is that which briefly states what the law of the case is. Not that the law is to be determined by the maxim, but the maxim becomes what it is, from the law. By a maxim, therefore, is meant a brief statement of the facts, and, as Sabinus says, as it were an outline of the case; which, when it is falsified in any respect, no longer fulfils its purpose."

In his arrangement, Pike follows Gaius quite closely; but so do most of the other modern institutional writers. For the Gaiian classification still rules the legal world. But Pike's work is anything but a reproduction of Gaius and since the former's Table of Contents has never been published we can, by reproducing it, obtain the clearest idea of how he treats his subject:

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APPENDIX

It is on this framework that Pike hangs his material, consisting of excerpts and quotations from the writings of the great authorities both ancient and modern. It is a rare and unique collection of the garnered legal lore of many centuries and it reflects little credit on the legal profession that this work has been allowed so long to remain in oblivion.

Pike was nowhere more correct than when he said that he had never lost his fondness for the Roman Law. Again and again thruout his works its influence is apparent. He quotes it, goes to it for illustration, precedent and guidance and had become saturated with its philosophy. A few illustrative excerpts from his non-legal writings may not be amiss:

"I submit it to my learned Bro. Woodbury, that we are in possession, a possession undisturbed during a longer time than the longest required for usucaption; that in such case the plaintiff, out of possession, must recover on the strength of his own title, and cannot call on us to produce our title-deeds: and that *In pari causâ melior est causa possidentis is an old* and sound maximum of the law."[24]

"But I know of no principle of the Roman law of praescription or usucaption which can give to recognition by a regular Council the effect of causing the time for praescription to run. The law of praescription, in case of a debt, proceeds upon the principle that after a considerable length of time payment of the debt is to be presumed, from long nonassertion of his claim by the creditor; and the further presumption that the evidence of payment has been lost or destroyed. In regard to land, long possession, without recognition of another's title, creates the presumption of an original grant or conveyance, now lost or destroyed; and the effect of the undisturbed and continuous possession is the same, where it was wrongful or even violent in its inception."[25]

"How will our American newcomers there escape contamination and defilement? Will they withdraw and seek more congenial associates in another field? Will they institute legal proceedings before the Orcinian tribunal, where the dead plead their causes before the Judges, Minos, Æacus and Rhadamanthus, praying that as unlicensed trespassers these prior occupants may be ejected and desterrados? The Court would dismiss the suit with great indignation, confirming the right and title of the ancient tenants, and condemning the pragmatical plaintiffs to wander eternally forlorn outcasts self-exiled, about the black marshes of the livid Styx."[26]

III

BACK TO THE COMMON LAW

After his quarrel with the Confederate leaders and his resignation from their army, Pike was appointed an Associate Justice of the Arkansas Supreme Court.[27] The seat of that body was then, or shortly afterward, at Washington, Hempstead County; for Little Rock, the capital was already in possession of the Federal forces.[28] Pike sat in hearings before the Court as late as January 6, 1865[29] and the following statement by the late Thomas W. Harrison of the Topeka Bar may be correct except as to the last clause:

"Elbert H. English, Albert Pike, and F. W. Compton were the Judges of that Court until in April, 1865. While he was one of the Judges, that Court decided many cases which involved important questions growing out of the Civil War, and Judge Pike wrote and filed fourteen of those opinions, but owing to the unsettled conditions of affairs at the close of the war, none of the opinions written by Judge Pike were published in the official reports, but they were all duly recorded and preserved in the Archives of that Court."[30]

But the Clerk of the Arkansas Supreme Court reports:

"After careful search I am unable to find either the originals of opinions handed down by him during the period indicated or any record of such opinions."

This constitutes a distinct loss; for the opinion which emanated from Pike's keen mind with its wealth of experience would have been a real contribution to the jurisprudence, not of Arkansas alone but of the whole country.

Hon. Edgar A. McCulloch, late Chief Justice of the Arkansas Supreme Court, now of the Federal Trade Commission, thus explains in a recent letter the reason for the disappearance of these unique productions:

"A new government was set up under Federal authority, a new constitution adopted, and a new Supreme Court created, which declared all the decisions of the court, held under authority of the Confederate States, to be void. During the time that the court was, what you might call, a refugee at Washington, there was no opportunity to print the reports; hence they were never incorporated in any of the printed re-

24. Trans. Supreme Council, 1876, p. 25.

25. Id. 1880, p. 19.

26. Trans. Sup. Council, 1890, p. 24.

27. "On the 8th day of June, 1864, his commission as such Associate Justice, under appointment of Harris Flanagin, Governor, was ordered to be entered of record by the Supreme Court then in session, and the same was on that day recorded." Certificate of W. P. Sadler, Clerk Arkansas Supreme Court, Jan. 31, 1927.

28. Letter of Chief Justice McCulloch, February 1, 1927.

29. "The proceedings of the Court appearing upon the record from the above date, to and including the proceedings of Saturday, August 27, 1864, all bear the signature of the said Albert Pike; that the proceedings of December 5, 1864, the opening day of the term, show his presence as one of the presiding judges, and the proceedings of January 6, 1865, also show his presence, but the proceedings of neither of the last named dates were signed by any of the judges." Sadler Certificate.

30. Albert Pike as a Jurist, New Age, X, 552.

ports, for the reason they were repudiated by the newly constituted court under the constitution of 1864."

And on the margin of the record of Pike's commission, the following entry appears:

"The proceedings subsequently recorded in this Record Book, having taken place since the adoption of the Constitution of the 16 March, 1864, are considered to be null and void, and so treated by the Supreme Court."[31]

Thus it is that Vol. 24 of Arkansas Reports contains no decisions between the January Term, 1863 and the December Term 1866. Meanwhile three of the judges there listed had been "elected under the Constitution of 1936 and resigned," and their offices had been "vacated under the constitution of 1864."[32]

But while Pike's judicial service was brief and his tribunal repudiated, both were as real as his military service, for about the same period, under the Confederacy. Pike never spoke of that with any degree of satisfaction. He despised and denounced the officers who were placed over him and of the one Civil War Battle (Pea Ridge) at which he was present, he said: "Where I was it did not amount to anything."[33] Of his own rank he declared, "I (am) only a Brigadier and Brigadiers are plenty as blackberries in their season."[34] And among his last public utterances was this:

"Military genius no longer has the rank it once had. It has been found to exist among the Boers and the Zulus, and to be by no means inconsistent with baseness, cruelty and a sordid rapacity. Bismarck, Castelar, Cavour and Gladstone are greater names than even Von Moltke, Garibaldi and Wellington. The Kings of Science, too, hold higher rank than the mob of European generals whose names are wholly unknown a little way from home. The memory of Suwarrow dwindles into insignificance by the side of that of Darwin or Father Secchi."[35]

In the light of all this, who can doubt that, of the two, Pike valued his judicial title much more highly? Yet it is always his military one which is used if any is. But instead of General Pike, why not Judge Pike, which he would have preferred?

After the close of the war, he located for a time at Memphis and then moved to Washington where he practiced for the balance of his professional life. In describing the change he said:

"I made arrangements with Robert W. Johnson, who used to be a Senator here. I proposed to him to come here and open an office for the prosecution of claims. I stayed in Memphis and he here part of the time. I thought by that arrangement we could make something for myself and him, but pretty soon it became necessary for me to come on here, so I made up my mind to stay here (Washington) and I did not go back to Memphis at all."[36]

IV

IN THE SUPREME COURT

This line of practice brought him frequently before the Federal Supreme Court[37] and among the important cases in which Pike appeared there was one[38] brought in behalf of the heirs of a Confederate army officer whose real property in Washington City had been confiscated by the Federal authorities under the Act[39] of Congress of July 17, 1862. Pike, in an exhaustive brief, went deeply into the English precedents legal and historical, which convinced the court not only that the joint resolution passed contemporaneously with the act in order to avoid infringing the constitutional guaranty against "forfeiture except during the life of the person attained,"[40] reserved the reversionary estate to the heirs, but also that the ancestor himself could not alienate it after confiscation. The decree of the trial court which denied relief to the complainants was reversed.

This decision afforded a precedent for relief to Pike's own heirs (apparent or presumptive) during his lifetime, enabling them to intervene to protect their reversionary estate in his Arkansas lands which had been confiscated but on which the purchaser at confiscation sale refused to pay taxes.[41]

In one of the celebrated "Hot Springs Cases"[42] Pike, who was associated with Matthew H. Carpenter for the plaintiff, had an opportunity to apply his knowledge of Indian titles and claims but was less successful. Altho his client claimed under an application made as early as 1818, pursuant to an act of Congress for the relief of those whose lands had been injured by earthquakes, a subsequent act of 1832, reserving title in the United States, was held to control because the Surveyor General had not previously recorded a survey of claimant's tract and returned it to the recorder. Pike never got over feeling that a serious mistake had been made. Nearly a dozen years later he declared that he would have had funds to publish his "Maxims"

"if the supreme court of the United States had not, in violation of all law and justice, deprived Henry M. Rector of the Hot Springs, to which he had as good a title as I have to the pen that I am writing with."[43]

Another *cause célèbre* in which Pike prepared a convincing brief, altho he is not listed with counsel in the official report, is that known as the Choctaw Case[44] which involved the rights of the Indians under their treaties with the Federal government.

"These treaties," observes Hallum,[45] "embrace a period, extending from 1786 to 1855. The history of this claim illustrates the struggles of the weak with the strong in all ages. After many years of vexatious delay, the Senate of the United States, was constituted an umpire, between the Choctaws and the government, and on the 9th of March, 1859, awarded the Choctaws $2,981,247.30."

But it was found that the rendition of an award was only the beginning of more delay. No appropriation could be obtained for its payment and suit was finally brought in the Court of Claims which allowed the Choctaws $408,120.83 for the violation of their treaty rights. They then took their case to the Supreme Court which reversed the judgment below and upheld the Senate award subject to certain deductions aggregating less than $80,000. In his brief Pike had cited the maxim *Placet enim esse quiddam in republica praestans et regale* and urged: "In this Republic that something super-eminent and regal is the judicial power and not legislative license." And after the decision was announced he said:

"The Supreme Court has just decided that the award I got in 1859 for the Choctaws was a final decision and ought to have been paid. They ought to have given interest, but they did not. I was very glad to have them decide that the award was final. It was made out of the treaty of 1855, which provided that it should be final. The adjudication of the Senate was on the question as to whether they should have the proceeds of the land sold under the treaty of 1830. They made the treaty of 1855, and then we set about getting an adjudication of the Senate on the treaty. It was referred to the Committee

31. Sadler Certificate.
32. Arkansas Reports, XXIV, 3.
33. MS. Reminiscences, 75.
34. Letter to Major General Holmes, December 30, 1862, p. 5.
35. Trans. Sup. Coun., 1888, p. 35.
36. MS. Reminiscences, 66.
37. There are in the Supreme Council's Library ten bound volumes of Pike's briefs and arguments (mostly in the Federal Supreme Court) and these represent only a part of his later forensic work.
38. Wallach v Van Riswick, 92 U. S. 202 (1875).
39. 12 U. S. Stats. at Large, 589.
40. Const. Art. III, sec. 3.
41. Pike v Wassell, 94 U. S. 711 (1876). Luther H. Pike, son, appeared for appellant but the brief was undoubtedly written by the senior Pike.
42. Rector v United States, 92 U. S. 698 (1875).
43. Hallum, I, 220.
44. Choctaw Nation v United States, 119 U. S. 1 (1886).
45. Biographical & Pictorial History of Arkansas, I, 229.

on Indian affairs. They took time, and called on the Indian office, and the land office."[46]

Thus during the last dozen years of his professional career, Pike was engrossed in the study of abstruse constitutional questions and engaged in causes of the highest importance from both the legal and the financial standpoints.

V

PIKE'S PROFESSIONAL IDEALS

It was to be expected that one of Albert Pike's temperament and culture should hold a high conception of his calling and the institution with which it is so closely connected. We have seen how advanced were the intellectual standards he set up for it; not less so was his idea of the lawyer's obligation to the public. In the very year of his admission to the bar he wrote a poem—Ariel—in which he idealized our country in these lines:

"The throne of Liberty stood in that land,
It guards the law and Constitution;—these,
These, and no other, held supreme command,
And everywhere, through all the land, was Peace."

So in an address delivered as early as 1861 he voiced this lofty ideal:

"Little respect is due the great lawyer, toil incessantly as he may, who sells his eloquence and learning for money to the highest bidder, and never generously and at a sacrifice attacks an ancient wrong, entrenched behind the strong works of prejudice and custom; an iniquitous precedent, aged and hoary, and therefore mighty to resist; villainies that have put on the vestments of the law; enactments contrary to common honesty and that violate the sacred faith of contracts; injustices perpetrated by the rich and powerful upon the poor and unprotected."[47]

He was very soon to put these sentiments to the test—and to meet it. The Confederate Generals commanding in Arkansas appear to have been of a low and lawless type and Pike, their "subordinate" in rank, was forced to oppose them or to wink at atrocities which appalled his refined and sensitive nature. As we have seen he did not hesitate to choose the former alternative, preferring charges against his "superiors" Hindman and Holmes, and, when they were ignored, addressing a letter[48] directly to the Arkansas delegation in the Confederate Congress in which he boldly declared:

"The Netherlands under the Spanish Duke of Alva were subjected to a tyranny more bloody, but not more insolent, ignoble and brutal, than your State of Arkansas under General Hindman. He assumed and exercised all the powers of despotism, and was for months as absolute a tyrant, and as complete an autocrat as Peter the First of Russia; and if he had resorted to the torture and the stake, though his tyranny would have been more savage and barbarous, it would not have been more illegal and degrading. He stamped upon both Constitutions, of the State, and of the Confederate States, at once. He dethroned the laws and deposed the judiciary. He clothed his minions, the Provost Marshals, with all the powers of government, and they were empowered to create a criminal code, make new offences, fix and measure the punishment, try the offenders and execute their own judgments."

Then, in reply to the excuse which had been offered, Pike, the champion of constitutional government, appears at his best:

"It has indeed been said that *'inter arma leges silent;'* but it was said when Rome, that had *once* been free, was submitting to the hateful embraces of military despotism. The laws were indeed silent amid the clash of arms when Marius and Sylla and Cæsar, and at last the cruel, insincere, treacherous, remorseless villain, Octavius, by turns, made 'the will of the commanding general the law' of Rome. Cromwell enforced this species of martial law in Ireland and England, and Napoleon in France; but the French Revolutionary generals were supervised and watched by civil commissioners sent from Paris, by whom they could be deposed. The civil authorities have never been deposed in any country, for any length of time, without imperial or other despotism following. When did the civil power of Venice yield to the military? When did a general dare to make his imperatorial will the law in the Republic of Switzerland?"

It need hardly be added that Pike despised anything savoring of chicanery or deception. He quotes Robert Toombs (whom he knew quite well) as thus characterizing the Confederacy's Attorney General and later Secretary of State:

"Benjamin is nothing but a pettifogger. He is a very able pettifogger; but if he were ten times as able as he is, and had ten times as much learning as he has, he would only be ten times as great a pettifogger."[49]

Once when an adversary in a non-legal field sought to prevail by garbling a quotation "to make it prove precisely the reverse of what it does," Pike said:

"In forty years' practice at the bar I have never known such an expedient resorted to by an Attorney; and I have had discussions with many who were not over-scrupulous, nor troubled by a very nice sense of honor; and it is very certain that if Mr. Adolph Crémieux belongs to the order of Advocates of Paris, and should offend in the same way in a plaidoyer at that Bar, he would be ignominiously expelled from the order."[50]

Yet Pike realized only too well that lawyers with his ideals were not numerous among his contemporaries. As early as 1845 he wrote:

"What service to his country can one do,
In the wild warfare of the present age?
To gain success, the masses must be swayed;
To sway the masses, one must be well skilled
And dextrous with the weapons of the trade.
Who fights the gladiator without skill,
Fights without arms. Why! he must lie, and cheat
By false pretences, double and turn at will,
Profess whatever doctrine suits the time,
Juggle and trick with words, in everything
Be a base counterfeit, and fawn and crouch
Upon the level of the baser sort."

Then to the smug assurance

"Truth is omnipotent and will prevail
And public justice certain;"

He replied:

"Ay, my friend!
A great man said so. 'Tis a noble thought,
Nobly expressed; itself a creed complete.
But in what sense is Truth omnipotent,
And at what time is Public Justice certain?
Truth will avenge herself, for every wrong,
And for all treason to her majesty,
Upon the nation or the individual,
That doth the wrong, by those grave consequences,
Which do, from falsehood or in deed or word,
By law inflexible result. The cause
Why nations do so often topple down
Like avalanches from their eminence,
Why men do slink into disastrous graves,
In the stern sentence hath been well expressed,
'Ye would not know the truth, or follow it.'
Truth *has* the power to vindicate itself;
But to convince all men that *'tis* the truth,
Is far beyond its reach: and public virtue
And public service eminent, are paid,
In life, by obloquy and contumely,
But, after death, by large obsequies,
And monuments and mausolea. *Thus*
Is public justice certain."[51]

It ought to be possible to do justice to the memory of Albert Pike, the pioneer comparative lawyer, without building "monuments and mausolea." His unpublished works are his most fitting memorial, but his life and professional career afford a lesson of the highest value to the bench and bar of today; for they demonstrate that learning, wide and deep, character and conscience, exemplified in every day practice, high ideals of public service, and even poetic genius, are not incompatible with marked success at the Bar.

46. MS. Reminiscences, 76.
47. Trans. 1861, p. 236.
48. Letter of March 20, 1863, reprinted, pp. 6, 9.
49. MS. Reminiscences, 84.
50. Trans. Supreme Council, 1876, 17.
51. An Evening Conversation, Nugae, 379-382.

THE ITALIAN PROJECT FOR A NEW CRIMINAL CODE

By Axel Teisen

ON September 14, 1919, a Royal Decree was issued for appointment of a Commission "for the purpose of preparing a new Criminal Code, which in harmony with the principles and rational methods for the protection of society against crime, would assure a generally more efficient and certain protection against habitual criminals."

Under the authority of this decree, the Minister of Justice or Keeper of the Seals appointed a commission of fifteen with Enrico Ferri as president and Attorney-General Garofalo as Vice-President. Of the other 13 members, 9 were lawyers and the remaining 4, biologists and psychiatrists.

At the opening meeting of the Commission, Ludovica Mortara, the minister of justice referred to the memorial preceding the Royal Decree, wherein stress was laid upon the dangerousness of the criminal and upon the penal character of his act (his "responsibility") but not his guilt (his "imputability"). "The degree of the legal injury inflicted on the laws of the civic society cannot be measured according to his guilt (imputability) but must be determined according to the dangerousness of the criminal."

At the same meeting Ferri stated that what was required was, to shift the emphasis from the crime to the criminal, and to prepare a code which harmoniously would protect both the individual and society.

In 1921 the Commission had finished the General Part of the Code as far as actual crimes is concerned (Progretto preliminare di codice penale italiano per i delitti, norme generalis) which the Government published together with translations thereof into French, German and English for the purpose of obtaining the benefit of competent criticism thereof, both Italian and foreign.[1]

II.

The project contains the First Book of the Criminal Code, its General Part. This is divided into General Provisions and three Titles; the first but one chapter, the second six and the third nine. The whole contains 131 articles or sections.

The General provisions deal with the authority of the code in relation to time, place and person, and also has provisions governing extradition.

Title I contains provisions relating to the crime; Title II concerning the criminal, his legal responsibility, his dangerousness, concurrence of crimes and recidivism, habitual criminals, feeble-minded criminals, and minor criminals. Title III enumerates the various sanctions and contains regulations for the work in prisons; how the sanctions are to be applied by the courts, conditional judgments and judicial pardons, parole, damages, fund of fines, etc. and its management, the effects and the execution of the judgment, and cases where prosecution or execution are to be or may be waived.

III.

The principles set forth in the General Provisions correspond in most respects with those of other modern criminal codes (nullum crimen sine lege, nulla poena sine lege poenali). Only the milder penal law is retroactive, but in this respect the code makes exceptions as to habitual, insane and minor criminals.

The same may be said about Title I: The Crime. The so-called political-social crimes are defined as being those committed exclusively from political motives and from those arising from collective interests.

It is not until we reach Title II that we find anything of particular interest in the code, but from then on it becomes extremely interesting, since it codifies in form of law the theories and proposals of the Italian Positive School.

The code takes for granted that man has no free will independent of the law of cause and effect, and that each of his acts is "un fatto naturale." Consequently, any question of guilt (imputability) is eliminated; the only question is that of the responsibility of the criminal (whether he was the cause of the crime.)

The reason why law reacts to the crime, is that its perpetrator has shown himself to be a danger to the peace of society.

While the code uses the word "penale" in various places and also in its title, the word punishment in its old meaning is unknown to it; it is replaced by the word "sanctions."

But it will not be necessary here to go into all the details of the code.[2]

As to the general principles upon which the code is built, it may be said that they indicate decided advances in various respects.

First: The code has removed all theology from criminal law. It takes literally the Biblical saying: Vengeance belongs to me, sayeth the Lord.

Whether the criminal has "sinned" or not, whether he is morally "guilty" or not, is immaterial. What the State is interested in is, that the criminal would not or could not comply with the rules of conduct of the society in which he lives, be these rules morally defensible or not.

We do not know whether the judges of Italy at present are in the habit, when a criminal comes up for sentence, to assume the role of an angry nursemaid, an irritable school teacher or an uplift preacher, and in sentencing the convict also give him a scolding or tell him that they are sorry that the law will not allow them to give him more than he is getting. But if this proposed code ever goes into effect, it will be made clear to the judges that they were appointed or elected to uphold the law of the community, and not to be its moral censors or mentors; that the sanction is all which the law directs and allows the judge to apply, and that everything beyond the sanction is ultra vires and an abuse, and a thing which in almost all cases will have a tendency to work against and nullify the pur-

1. I wish to express my thanks to Luther P. Hewitt, Esq., Librarian of the Law Library of Philadelphia, and to Joseph E. Bartilucci, Esq., both of the Philadelphia Bar, the first for his kind assistance in hunting up literature upon the subject, and the latter for his efforts—in vain unfortunately—to obtain an official copy of the proposed code or of one of the official translations thereof. I have had to get along with a private translation into Spanish.

2. For these I refer to the Article by A. M. Kidd in California Law Review Vol. X, p. 384, etc.

poses of the sanction. What the law prescribes for the criminal he must take, but nothing more. He is still a human being and should not be made to take gratuitous insults just because he is in a position where he cannot help himself. If such, nevertheless, are inflicted upon him, they are apt to have but one effect, namely, to make him even more bitter and resentful against society, its rules and its representatives.

Besides, this habit seems to be extremely undignified.

Second: If there is no theology in the code, on the other hand there is teleology. Crime and punishment or sanction are not brought to a counter where first the crime is put on one side of the scales, and then punishment is piled up on the other, until the two sides are said to balance each other, and when this has been done more or less neatly and accurately, it is supposed that everything humanly possible has been done, and that all is well.

The code realizes that punishment or sanction in themselves are nothing, that they are but means to an end. If the possible sanction, under all the circumstances, cannot be expected to have the intended effect, or where it is not considered necessary in order to obtain this effect, it is not applied. Some other or milder sanction, or a judicial pardon are used.

IV.

From the day when Eve ate of the apple and gave Adam, and he also ate, there have been crimes and criminals on earth; that is to say, there have been people who would not or could not accommodate themselves to the laws of behavior of the time or place where they lived.

And there have ever been the same reactions to the crime.

The criminal has reacted by "I could not help myself," "The serpent gave me, and I ate," "The woman gave me, and I ate."

On the victim the reaction has been anger, the craving for revenge and reparation.

On the neighbor the effect has been fear, demand for security.

As long as there was no organized society, or an embryonic one only, it was the reaction on the victim which determined what should be done to the criminal. If caught, he was killed, or else he was outlawed, and everybody who came across him was at liberty to kill him.

Under such conditions the retribution theory served all sides. As the retribution took the form of absolute elimination, the craving for revenge was satisfied, as was also the demand for security, at least as far as this particular criminal was concerned.

But as the alleged criminal was not willing to lie down and take his punishment, if he could help it, and as his relatives would resent what had been done to their brother and try to avenge it, a state of bloody anarchy resulted which eventually would make life unlivable, with the result that the victim's demand for reparation asserted itself alongside of the craving for revenge, and we find that with our ancestors all crimes, even murder, could be settled for by the payment of indemnity to the victim or to his heirs.

But even so, acts of revenge were all too numerous, and as the duty of revenge rested on the "gens" and was inherited from generation to generation, the whole community would eventually become involved, and the reaction on the neighbors could not be satisfied; there was no security at all.

As society became more and more organized, the State authorities were of necessity forced to take over the handling of the criminals, and gradually a distinction was made between torts—those injuries which affected the victim and could be left to his prosecution, —and crimes—injuries which affected the whole body politic, and the treatment of which was passed on to the public authorities.

What the authorities were interested in, more than anything else, was that there should be peace and order in society, and for them it did not so much become a question of having the crime avenged as of striving for the goal, that no crimes should be committed.

As each act of revenge was liable to become a crime in itself and under all circumstances would provoke other acts of revenge and crime, the State powers could not proceed on the revenge theory. Instead thereof they proceeded on the terror theory.

When a crime had been committd, it became the duty of the State to react to it in such a way, that not only would this criminal not do the same thing again, nor commit any other crime, but that all others who might be criminally inclined would be so struck by terror that they would prefer to behave themselves.

As in the course of time the powers of the State became more and more centralized, until they all vested in an absolute king or in a very small oligarchy, crimes gained an even more serious aspect than before. They became not only violations of the right of the individual and of society as such, they were invested with the character of violations of and offenses against the Majesty of the King who held his office by the Grace of God. They all became political offenses at a time when any political offense meant treason. We still have a reminder of this state of mind when we hear men discuss crimes as the flouting of the Majesty of the Law (Binding's "Norme-Theory").

The terror theory continued to gain force until the latter part of the 18th century. In one of his official opinions Henrik Stampe, who was attorney-general of Denmark-Norway in the sixties, wrote: The purpose of punishment is not so much directed against him who is being punished as against others of a similar mind, whom one tries to influence by its terror and its character as a warning.

But the employment of terror did not work. Crimes continued to be committed; at times they increased enormously both in number and in atrocity, and the only remedy of which the authorities could think was to make the punishments and their execution ever more terrible.

By the middle of the 18th century, every county seat had its Hill of Execution with its wheels upon which the bodies of the criminals were broken, before or after hanging, as the case might be, and its gallows with one, two or more bodies swinging with the wind, with ravens and crows hacking at the bodies and mangy dogs waiting below, if perchance a hand or a head might become loosened and drop to the ground. And they had their prisons where the prisoners were herded together like sheep in a pen, where brutality, hunger, disease and all uncleanliness was rampant, and from which practically no one ever came out whole in body or in mind, especially as the insane most often were chained up in the same prison.

V.

There was never a time during the centuries of progressing centralization, when there was no opposi-

tion, no protests. The demand for conformity was at all times an outrage to many minds. But for centuries all individualistic efforts were suppressed.

The Albigenses were nearly exterminated. Johan Husz was burned at the stake. Martin Luther was more successful for a time, but at the end of the thirty years war, there was not one pope and one emperor, but numerous kings, dukes and other potentates, each of whom embodied both pope and emperor: Cujus regio, ejus religio. After many revolts, the tillers of the soil had become serfs, the free cities had become trading places dependent upon royal charters.

The concentration of power reached its zenith, and as usual, by its mere existence and the momentum thereof continued for more than a century after it had ceased to satisfy either the thinkers or the workers.

But in the course of the 18th century, the age of enlightenment, the opposition to it, the slogan of individualism grew steadily and irresistibly, until the fathers of the American revolution declared all men to be born equal, and the French revolutionists proclaimed the rights of men.

All men being equal, all men had a right to share in the Government. All men being rulers instead of ruled, all men were responsible. If, then, some of them committed crimes, it was because they deliberately had chosen to do wrong instead of right. In other words, they were morally wrong, and being morally wrong, they must be punished in order to extenuate the sin they had committed.

Whether anybody ever in the bottom of his heart really believed in this theory, it is hard to say, but the democratic dogma in its purity having been given and accepted as the governing truth, the absolutely free will of all men dogma must of necessity also be accepted.

The result did not answer to the expectations. Crimes continued to be committed without diminution, and as through the influence of Beccaria humaniy had been introduced into criminology and penology, they even multiplied; the recidivist became an enormous problem.

The fruits of the retribution theory have been held up by Ferri for general edification: The present criminal law and its application are nothing less or other than an enormous machine, which sucks in a numberless flock of human beings and after a while spits them out again, after they, between the wheels of the machine, have lost all trace of honor, moral feeling and health, and have been so branded that henceforth they will enlist forever in the ever growing army of criminals.

VI.

In the land of Philosophy of Law there is a cemetery, apparently very dignified, quiet and peaceful.

It is filled with splendid mausoleums, on each of which may be read a famous name in gold letters: Kant, Hegel, Feuerbach, Bentham, Austin, Örsted, Stahl, Goos, et al.

In each of these mausoleums has been put to rest a Theory of Punishment.

In the vestibule of the chapel is kept a waiting list. It is not open to public inspection, but it is a rather safe guess, that from it will from time to time be transferred to new mausoleums such names as Alimena, Carnevale, van Hamel, Prins, Liszt, Binding, Lombroso, Saleilles, Aschafenburg, Ferri, Garofalo and other minor lights.

But the cemetery is not as peaceful and quiet, as it would appear.

During nights it is full of ghouls and ghosts, ghouls who dig up the remains of the deceased theories, inspect and dissect them, scrape the bones, returning what is left to its repository, and the next day send out a "new" theory,—generally the same pudding with another sauce. And ghosts of the buried theories, who resent the burial, and especially the digging up and remodelling, cry out that they are still alive and demand to be released and recognized as living forces.

But no fundamental change ever takes place. Like the old, so all of the new theories proceed upon one of two principles, either that of retribution for what has been done, or that of security against that which may be done in the future.

The retribution theory focuses its attention on the crime. That led van Hamel to say: Heretofore the criminal has been made well acquainted with the law; now it is high time that the law becomes acquainted with the criminal. And the prevention theory pays attention to the criminal and to very little else.

When it comes to the remedies, both of the theories are very much the same: So much money payment, so much segregation, so much elimination.

Is this see-saw to go on forever? Can we never get any further?

VII.

Sickness is as old as man.

It was first thought to be caused by the jealousy of the gods, or it had its origin in an evil spirit taking possession of the body.

In surgical cases, man very soon learned to apply practical remedies in order to set the broken bone or heal the wound.

But in medical cases, whether acute or chronic, he knew and could think of nothing better than incantations, tape measurings, mysterious formulas, rituals, sacrifices, etc., etc. And these sometimes help. In certain cases and with certain persons, suggestions have a powerful influence. The preference for that kind of treatment has not died out to this day, vide Christian Science, Faith Healers and Quacks.

On the whole, however, the results from these processes were very unsatisfactory, and for thousands of years men tried and by degrees learned to diagnose the various common forms of disease. But even then the treatment remained very uncertain, because the cause of the sickness in serious cases was unknown. The cause was supposed to be some "humor" in the blood or digestive organs, and blood letting and purgatives were supposed to be sovereign remedies. Some thirty years ago, in Eastern Nevada or Western Wyoming, on a rock a couple of hundred feet from the railroad track, there was cut in enormous letters the following legend: Hood's Sarsaparilla cures all diseases.

Through experimenting and by the help of chemistry the physicians learned to devise specific remedies for specific diseases, provided they were acute, but in the face of epidemics and chronic and constitutional diseases they remained more or less powerless.

For they did not know the cause of the disease. Neither did they always realize that the previous condition of the man who was taken sick had a great deal to do with whether he would be stricken or not.

In many cases, they are still in the same position, but in others they have succeeded in isolating the disease producing germ, to learn under what conditions it will produce the disease, and on the basis thereof to devise not only cures of the individual cases or means of halting it, but such processes as will eliminate the germ or stop its dangerousness, through hygiene and otherwise.

But they have not and never will discover and isolate "the" germ; in other words, there is not one

germ of sickness, but every species of sickness has its own germ. As each of these are discovered and isolated, it can be found how it came to develop in the body, and steps may be taken of a real curative and preventive nature.

* * *

For thousands of years, medicine men, priests, philosophers, lawyers and statesmen have dealt with crime and criminals.

Like in the case of sickness, they soon learned to deal with "surgical" or obvious cases. That a husband may kill on the spot his wife's paramour if he "sees bare flesh and a disturbed bed," as Christian V's Danish law expresses it, has always been axiomatic (at least to a jury).

As the physicians learned to diagnose the various diseases, so the lawyers have through the ages built up a magnificent structure of specified crimes, and they are beginning to do the same as to criminals.

But the questions: Why crime? Why this crime? Why in this man? What is the cure or cures? remain unanswered.

Or if answered, the answers satisfy themselves by generalities and excuses: Illegitimate birth, bad home conditions, evil associations in youth, strong provocation, severe temptation, etc., etc.

But all men of illegitimate birth, with bad home conditions or wicked associates, or who have been strongly provoked or tempted, do not become criminals.

Why then, this man or these men?

Of course, we can refuse to answer and remain satisfied by muddling along in the same old rut. In this way the world has existed from time immemorial, and it still goes on without any apparent imminent danger from being destroyed by crime.

But if we are not satisfied to follow the old track, we must call in the "doctors." We lawyers will never find the answer unaided. It is true, we consider ourselves the wisest men on earth, that we need to be given a chance only and we will put everything right. And we appear to be incurable in this. For many years the world war had been staved off by the Lords, Dukes, Barons and what not, but when at last there was a lawyer at the head of every government in the civilized world, then the war was bound to come. For lawyers argue about "points" and their point is dearer to them than their "case." Fiat justitia, pereat mundus.

The positive school will never do it.

It has concentrated on the criminal, as the classical school concentrated on the crime, but there is something back of both, and both must be given equal consideration.

What are the germs? Under what conditions do they flourish? What are the symptoms which show that they have entered man? How are they to be killed off before they have had time to do much harm? How are they to be prevented from entering? And how are we to repair the harm, which they may have done? Summa summarum, how is crime to be eliminated from society to the same extent as yellow fever and other diseases have been eliminated and gotten under control?

There is no other way than study, research and experiment.

Can it be done?

If it can, it will be an extremely slow process. Unlike the physicians, we will have no living or dead bodies upon which to experiment and dissect, and consequently we will have to heap up an enormous number of isolated "cases" before we will be justified in drawing any general conclusions.

Perhaps it cannot be done. But it is certainly worth trying.

In the meantime, the positive school as expressed in the proposed Italian Code, appears to give promise of relief from some of the worst of the conditions under which we are suffering.

SOME FEATURES OF TAXATION IN SWITZERLAND

Introductory—Swiss Taxation System and Its Historical Background and Development—Cantonal Taxation—Federal Taxation—Limitations—Jurisdictional Limits—Double Taxation—Holding Companies

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INTRODUCTORY

THE increasing investment of American capital in foreign countries has of recent years called the attention of capitalists and lawyers of this country to taxation abroad. This is partly due to the favorable position which some foreign tax laws grant to certain corporations, above all, to Holding Companies. This is especially true of Switzerland, which country, for many years past, had sought to attract international capital associations of this character; and a particular reason for this appeal to foreign companies is the fact that in the taxation system of Switzerland there is, with the exception of a temporary war tax, no room for federal taxation. The favorable tax laws, as compared with those of the adjacent countries, are mainly responsible for the very considerable afflux of foreign capital to Switzerland. There are of course still other reasons which, however, are not of interest here (advantages of a stable and non-depreciated currency, danger of sequestration and capital levy in the belligerent countries, etc.).

The comparatively important position which Swiss taxation thus holds among the revenue systems of other European countries has induced the writer to present here a short survey on Swiss taxation which, as a matter of course, on account

of the limited space, claims in no wise to be exhaustive.

SWISS TAXATION SYSTEM AND ITS HISTORICAL BACKGROUND AND DEVELOPMENT

Switzerland has no uniform system of taxation. Like the United States, the Swiss Republic is a federation of states, consisting of a number of political subdivisions, called "Cantons," which may be compared with the American "States." Consistently, we also find in Switzerland a double set of co-existing powers: On one side the Federal Government and on the other the Cantonal Governments. A similar situation obtains in the field of taxation. We have to distinguish between the federal and the cantonal tax laws and tax authorities.

Prior to 1798—when the revolution swept the land—the several Cantons and Communal authorities obtained the necessary—at those times still very moderate—revenues through excise taxes, import duties and poll taxes. There was no federal taxation in existence, since the federal assembly of those days was in about as pitiful a position as the Continental Congress: It lacked the necessary powers to levy taxes and to collect them.

From 1798-1803—the period of the centralized government which Napoleon had imposed upon the Swiss country and which had arbitrarily done away with the Cantons — the cantonal and communal taxes had of course disappeared. The cantonal and local tax laws were replaced by two federal revenue acts, bearing date of October 17, 1798, and October 15, 1800, enacted by the new central government. These laws enacted a general property tax, a tax on the turnover and the net profits of commercial enterprises, an estate tax, a tax on the transfer of real property, a stamp tax on shares and various excise taxes, chiefly on beverages and articles of luxury.

In 1803—the beginning of the so-called "Mediation" and the reviving of the Cantons—these federal taxes disappeared again, and there was nobody to regret their disappearance; for the whole system of a centralized government had become highly unpopular. Since 1803, and above all, since 1814—when the Napoleonic empire went to pieces—many Cantons returned to their old systems of taxation which were in force before 1798. Only few of them[1] went on with the property tax. Some[2] kept it, but only for a few years, and then dropped it again in the twenties of the past century.

In Switzerland the "Restoration" period lasted until 1830. In the ensuing years one Canton after the other made democratic constitutions, allowing the people to be represented in a parliament. The democratic governments and parliaments enacted property tax laws, the majority of which, however, did contemplate only real property.

The fiscal aspects changed again when in 1848 the present Confederation was formed which cast the heretofore loose federation of sovereign states into a firmly bound federal state. The constitution of 1848 deprived the Cantons of all external revenues, wherefore they were anxious to provide for means to compensate the loss sustained by reason of the external revenues' proceeds being turned over to the newly created Federal Government. The necessary compensation was found by imposing taxes on the income—which means a revolution in the history of Swiss taxation; for income taxes were unknown before.[3] But now one Canton after the other enacted income tax laws, be it by subjecting the total income to the tax, or be it by imposing a supplementary or partial tax on the income. In 1914 all but six Cantons had their income laws. In 1919 there remained only three Cantons without any income taxation and in 1923 the Canton of Geneva combined the existing property tax with a tax on the income.

One has nevertheless to bear in mind that the majority of the Cantons still lay the main stress on the property tax—which fact is easily explained by the economic development of the Swiss country. When in the past century the main stock of the Swiss tax laws was enacted, Switzerland was still to a very large extent an agricultural country where the principal source of wealth and prosperity were not large industrial or commercial incomes, but landed property, the income from which is irregular and not always easily ascertainable. Things changed with the growing importance of trade and industry in Switzerland. The example of Basel-Stadt with its income tax dating back as far as 1840 is a very good example; for this Canton was at that period the commercially most developed Swiss Canton. But as aforesaid, the basic conception of most of the Swiss tax laws is still that taxation of income forms but a kind of accessory to the property tax. Only seven Cantons, among which Basle, Lucerne, Zurich and Geneva may be known to the American reader, have a combined system of a general income and a general property tax.

Federal taxation has a history of its own. As in the United States, the power of taxation of the Federal Government is a delegated one. It can only impose taxes expressly assigned to it by the constitution or amendments thereof.

In 1848—the birth-year of modern Switzerland—the new constitution went into effect, transferring the power of subjecting imports and exports from the Cantons to the Federal Government. In order to mitigate this sudden change, the Cantons were to receive a part of the custom duties; which right lasted until 1874. On the other hand the new constitution provided that the Cantons—if need should arise—would have to support the federal finance, an event which only happened once. The comparatively small needs of the Federal Treasury Department of those days were fully met by the customs and the proceeds of the federal postal service.

As in most other respects the fateful year 1914 marks also the beginning of a new era as far as Swiss federal taxation is concerned.

Before the war the Federal Government was in a position to meet nearly all its financial needs with the proceeds of the customs. Thus over 85% of the federal expenditures were covered in 1913 by the duties. When the war broke out the overwhelming part of this source of revenue was at once cut off.

This and the enormously increased needs of the Federal Government (mobilization costs of the army, social insurance, electrification of the Federal Railroads, etc.) called for the immediate creation

1. Such as Appenzell, St. Gall, Glaris and Thurgau.
2. Zurich, Lucerne, Zoug and Nidwalden.
3. Except in the Canton of Basel-Stadt, where the income tax law dates back to April 6, 1840. This law was the model of the first Prussian income tax law.

of a federal internal revenue system to meet the exigencies of the time. But as internal revenue was hitherto the exclusive field of Cantonal legislation,[5] the federal constitution had to be amended.[6] On June 6, 1915, the Swiss people voted the amendment introducing the Federal War Tax of 1915. This non-periodical tax was laid upon property and income (the latter only as far as it was not derived from personal or real property). As to property the minimum tax rate was 1% and the maximum 15%; as to the income the corresponding rates were ½% and 8%. The tax itself was levied by the Cantons, which were entitled to retain 20% of the proceeds. This participation of the Cantons, which is also a feature of the ensuing federal taxes, is supposed to compensate the loss sustained by them, resulting from the power of the Federal Government to impose direct taxes besides the cantonal authorities.[7] This Federal Wax Tax was imposed in 1916 and 1917 only.

At the close of 1916 the Federal War Profit Tax was added, but not under the form of a constitutional amendment, but by a resolve of the Federal Council (Executive of the Swiss Republic) based on the extraordinary powers conferred upon it in 1914. This War Profit Tax was also a temporary one and was imposed on the net profits derived from commercial and industrial enterprises exceeding in amount 10% of the average net profits of the two last fiscal years preceding July 1, 1914. If the profit was derived from a single transaction, the profit in excess of Fr. 5,000 was subject to the tax. The minimum and maximum rates were 30% and 40%.

In 1921 the War Profit Tax was replaced by the so-called New Extraordinary War Tax which is still in force, and which is laid down in the constitution. Nevertheless this tax too is only a temporary one; for it shall only be in force until the mobilization costs will be paid off (about in 1932). This important tax will be considered under the head of "Federal Taxation."

CANTONAL TAXATION

When studying the tax laws of a particular Canton, one should always bear in mind that also the community where the taxpayers resides or in the case of corporations has a seat, has the right of imposing taxes. In some Cantons the legislation fixes the maximum tax rate which communities may impose.[8] In others[9] the municipal authorities are entirely free to impose whatever taxes they see fit, irrespective of the proportion to the cantonal taxes. In a third group the cantonal legislation provides that the communal taxes are to correspond in amount to the cantonal tax (per head) and in a fourth group the municipal authorities impose no taxes at all.[10]

The following lines propose to deal only with the property and income tax as imposed on individuals and corporations, which taxes are both considered in Switzerland to be direct ones.[11]

I. Taxation of Individuals. The multitude of cantonal taxation systems may be divided into the following three groups:

(a) Cantons with a general property tax and no income tax. As shown in the historical sketch this group ceased to exist in 1923, whereas ten years before four Cantons still belonged to it. This group, however, still exists as far as the taxation of corporations is concerned.[12]

(b) Cantons with a general property and a general income tax. The Cantons forming this group have the most complete and most modern tax laws in Switzerland.[13]

(c) Cantons with combined systems. Here we find a number of tax laws imposing a partial property and a partial income tax.[14] The other Cantons impose a general property tax together with a supplemental income tax. The fact that this group still forms the majority is noteworthy, because it shows that taxation of real and personal property was and is still the leading feature of internal revenue in Switzerland.

Space forbids to consider here the tax laws of the several Cantons, one after the other. Suffice to devote some lines to the tax law of the Ct. of Zurich, not only because Zurich may be called the most important Canton of the Helvetic Confederation, but because the Zurich tax law will undoubtedly serve as a model law for other Cantons which are about to modernize their revenue laws.

The immediate ground for the making of a new tax law in Zurich is to be found in the federal war tax assessments in 1915 for the Ct. of Zurich strikingly exceeding the figures which resulted from the assessments for the cantonal taxes. For this surprising difference the defectiveness of the old law was held responsible. And it was certainly time to replace a law which dated back to 1870 and most parts of it even to 1861 and 1832, a law which did not even distinguish between the taxation of individuals and of corporations.

The structure of the whole law is, if compared with American tax laws, very simple. Every income of whatsoever nature is upon principle taxable. But certain deductions, specified by the law—the application of which is illustrated by numerous judicial decisions—are allowed, such as charges and expenses, salaries and wages, interests on debts and insurance premiums, provided they do not exceed Frs. 300.00 and the total income be less than Frs. 10,000.00 a year. The law provides also exemptions, but they are, if compared with most of the American tax laws, astonishingly small. Thus only Frs. 800 of the yearly income, Frs. 200 for every child, except the first, and Frs. 200 for every person supported by the taxpayer are exempt. Special provisions are made for persons earning their income partly outside the Canton and non-residents deriving it in part from inside. According to the law, residents may deduct from their total income wherever earned that portion which is subject to tax by any other Canton. This rule is but a corollary

5. It was an unwritten constitutional law that the Cantons should have the right to impose direct taxes and the Federation indirect ones. As to the difference see ann. 7.
6. Until the amendment was voted the Government issued loans.
7. The question what taxes are direct or indirect is also a much controverted one in Switzerland. As far as the legal meaning is concerned the majority of the authorities define direct taxes as taxes which can not be shifted.
8. E. g.: Zurich: No municipal tax is to exceed 250% of the cantonal tax (per head); s. 107 Zurich Tax Law. In 1926 the tax imposed by the City of Zurich was 133% of the cantonal tax. Before the rate was 150%.
9. The majority of the Cantons.
10. At present such is only the case in the Canton of Basel-St.
11. But as the Cantons are sovereign in the field of taxation, they may and do impose various other taxes. From among miscellaneous taxes in effect in the Ct. of Zurich I cite: A gift and inheritance tax, stamp taxes, a tax on the sale or transfer of real property, a tax on the profit on sales of real property. Various other Cantons have taxes on admissions (so-called "ticket-tax"), etc.
12. Ct. of Schwyz.
13. Basle (both parts), Zurich, Geneva, Lucerne, Solothurn and Uri.
14. Berne.

to the well known principle of the Swiss Constitution forbidding double taxation. There is no law defining what is meant by "double taxation"; but a long set of decisions of the Federal Court illustrates the judicial application of this constitutional provision and represents, taken as a whole, a body of judge-made-law in the real Anglo-American sense. Residents deriving part of their income from abroad are allowed to deduct such portion of their total income wherever earned which corresponds to the existing proportion between their income from abroad and that from inside the Canton. In the case of persons residing in other Cantons and earning part of their income in the Canton of Zurich the law refers again to the rule against double taxation. In the case of non-residents deriving part of their income from the Canton of Zurich the net income actually earned in the Canton is subject to tax. The rate is a progressive one: 1% for the first Frs. 1000, 2% for the next Frs. 2000, 3% for the following Frs. 3000 etc. until 7% for Frs. 7000 and above this sum. For incomes exceeding Frs. 28000 per year the tax rate is only 5%. Only few words are needed to mention the property tax. It includes the taxation of real and personal property. No distinction is made between tangible and intangible personal property, both being subject to the tax. Also here the exemptions are rather small. Exempt are only clothes and books of the taxpayer and its family and the strictly necessary household articles; further all tools, instruments and objects for the exercise of the business up to Frs. 10000. Taxable is only the net property, i. e. the assets after deduction of the liabilities. But if a resident has property also outside the Canton he may from his property situated in the Canton of Zurich only deduct that portion of his liabilities which corresponds to the existing proportion between the total of the assets and the liabilities wherever the property may be situated. As to the deduction of assets subject to taxation in other Cantons the rule against double taxation is also in force here. But residents of the Canton owning commercial or industrial enterprises abroad have to pay taxes for at least 1/3 of their net business property wherever situated. The rate 1½ p. m. As far as real property is concerned the taxes are imposed and levied by the municipal authorities. The Federal Court has decided that the lex rei sitae is strictly to be followed. The rate is in no case to exceed ½ p. m.

2. Taxation of Corporations.[15] Each corporation pays an income and a capital stock tax. Taxable assets are: The active balance of the loss and profit account less the balance brought forward; all assets, though not appearing in the active balance, which must be considered as working expenses that are not justified by the ordinary course of the business, such as purchases of new plants, machinery, etc., or the improvement thereof, payments on calls of capital, gratuitous payments to third persons, depreciations exceeding in amount those which become necessary in the ordinary course of the business, etc. From among the deductions which are allowed I cite: Payments into funds which are themselves tax-exempt (workmen's compensation funds, etc.), discounts, reimbursements to members and customers, ordinary depreciations, etc. The rate of the tax to which the net profits are subject is fixed at half the percentage, formed by the net profits and the taxable capital of the corporation. But the maximum tax-rate is 10% in spite of the net profits exceeding 20% of the capital.

A corporation has also to pay taxes for its capital stock at the rate of 1 per mill.[16] Subject to the tax are: The paid in portion of the issued capital and the surplus.

In the case of corporations doing business or owning real property in other Cantons, or in the case of foreign corporations doing business or owning real property in the Canton of Zurich, the law refers again to the prohibition of double taxation, i. e. to the federal jurisprudence. But a Zurich corporation doing business abroad must by express provision of the law be taxed with at least 1/3 of its capital stock and its nets profits. Corporations from abroad doing business in the Canton of Zurich are taxed according to the amount of their turnover in the Canton due regard being had to the expenses and to the capital employed in the Zurich branch.

FEDERAL TAXATION

1. The *"New Extraordinary War Tax."* This tax is only a temporary one. As soon as the mobilization costs will be paid off (about in 1932) the law will be repealed. It imposes a tax on the income and the property of individuals and corporations.

(a) Taxation of individuals. The law applies to persons domiciled in Switzerland or staying there for more than six[17] months. Furthermore it applies to persons interested in Swiss enterprises or owning real property in Switzerland. But persons domiciled or residing in Switzerland have to pay taxes for at least 1/3 of the capital employed in foreign enterprises and the income derived therefrom.

The tax is assessed for a period of four years and levied every fourth year.[18] But as the economic condition of the taxpayers may greatly change within the period of the four years for which the tax is assessed, the law provides that the taxpayer may apply for a partial or total release from the tax.

The property tax is computed from the net assets, i. e. difference between the liabilities and assets. Where the property is partly situated in Switzerland and partly outside, the taxpayer is permitted to deduct a proportionate amount of his liabilities. The law exempts household articles with a value not exceeding Frs. 25000. In particular cases the law grants additional exemptions. The minimum and maximum tax rates are 1 per mill (when the fortune does not exceed Fr. 15000) and 20 per mill (when the fortune exceeds Fr. 2400000).

We now consider the income tax which subjects every kind of income to the tax. It is computed from the net profits. Besides, the law allows to deduct 5% of the capital employed in the business. The taxpayer is further allowed to deduct the losses sustained in the course of four years (period of assessment). The minimum and maximum rates for one period of assessment are 0.4% (with an income not exceeding Fr. 2500 a year) and 20% (with an income of Fr. 150000 or more).

15. Corporations, i. e., corporate entities doing business work. The tax law includes Stock Corporations (Companies, ltd. by shares), Cooperative Associations and Registered (Business) Societies.

16. Except Holding Companies.
17. See under Jurisdictional limits.
18. Although it is made payable in four yearly installments.

The exemptions vary according to the amount of property owned by taxpayer.[19]

(b) Taxation of Corporations. A corporation is subject to the federal taxation, if it has its seat in Switzerland, or is doing business or owning real property in Switzerland. A domestic corporation doing business abroad is allowed to deduct from the total tax sum two thirds of the part which proportionately bears to the business of the foreign branches. In establishing this ratio it was held that not only the assets of the enterprise in Switzerland and its foreign branches, but also the respective net profits thereof are to be considered. In the case of foreign corporations doing business in Switzerland, the tax is computed according to the ratio of the business transacted in Switzerland to the business done outside. The New Extraordinary Federal War Tax is of the nature of a combined income and capital stock tax, because the rate of the tax depends on the proportion between the capital stock and the net profits of the corporation. Thus a corporation with net profits reaching 1-2% of its capital stock, pays a tax of Frs. 1.50 on Frs. 1,000 of its paid up capital stock and the same amount on Frs. 4,000 on those parts of the issued capital which is not yet fully paid in; a corporation with net profits representing 2-3% of the capital pays a rate of 3 Frs. etc. The progression stops when the net profits reach 65% of the capital stock where the rate is fixed at 10% of the paid up capital and at 2½% of the non-paid up capital. For the computation of the tax the capital stock means issued capital and surplus. As to the computations of the net profits the same principles obtain as in the case of individuals.

2. The stamp tax. Before 1917 the Federal Government had no power to impose stamp taxes, this right being retained by the Cantons. But only few cantonal tax laws imposed stamp taxes. It was not until June 19, 1917, that the constitution was amended to the effect that the Confederation was allowed to enact stamp tax laws. The right to impose stamp taxes is not entirely taken away from the Cantons: They are only prevented to enact the same tax laws as the Confederation, i. e. to impose taxes on the same object. This encroachment on the sovereignty of the Cantons is in some way compensated by the fact that for the first ten years the Federation is to indemnify those Cantons which had to renounce their former stamp taxes. Moreover, the amendment provides that 1/5 of the net proceeds of the federal stamp taxes shall be apportioned[20] among all Cantons. The law subjects to the tax the following instruments: Shares of stock and other interest-bearing certificates, bonds, notes, negotiable instruments, bills of lading of all kinds, receipts for insurance premiums and coupons. The tax is due at the issue and the transfer of the said instruments. The law itself is rather complicated and offers little scientific interest; but it is of great practical importance so that every good Swiss lawyer must be familiar with it.

LIMITATIONS

1. In general. The Swiss taxpayers are safeguarded against illegal exaction of taxes by the fundamental rule expressly or impliedly recognized by the public law of the Confederation and the Cantons that no tax can be imposed unless it is consented to by the people. This assent may be given by the parliament or by popular vote; for, no federal tax can be imposed before it is laid down in the constitution; and such amendment must be voted by the people at large (the so-called "obligatory referendum"). The same is true in the field of cantonal taxation. For, most of the Cantons provide that not only constitutional amendments, but also laws enacted by the legislature must be approved of by popular vote.

Another fundamental weapon which is constantly being used by the taxpayer is the famous fourth article of the federal constitution to the effect that all persons "shall be equal before the law." This provision plays about the same legal part in Switzerland as does in the United States the "due process" clause. Whenever a taxpayer believes that he is wronged by the tax officials, he invokes, besides the specific provisions which, he alleges, have been violated, the fourth article of the federal constitution. This has the advantage that the suit may directly be brought before the Federal Court in Lausanne, in a matter where no appeal would otherwise be possible to the Federal Court; for, in tax matters such an appeal is only possible when the federal constitution is violated. In most of the Cantons tax suits are not fought out before the ordinary courts, but before judicially organized Tax Appeals Commissions.

2. The field of cantonal taxation is limited by the federal constitution. The Cantons are not allowed to tax the property and the instrumentalities of the Confederation; nor are they permitted to impose the same taxes as are levied by the Confederation, as far as stamp taxes are concerned. But it is noteworthy that there is no such problem in Switzerland as the protection of interstate commerce from state taxation. This is mainly due to the fact that the principal instrumentalities of intercantonal traffic and commerce are not privately owned, but in the hands of the Confederation. All important railroads of intercantonal character[20], the postes, the telephone and telegraph system being owned and managed by the Confederation, there is no room left for cantonal taxation, nothing to say of a constitutional clause forbidding the taxation of international commerce.[21]

A very important limitation of the cantonal powers of taxation is the constitutional prohibition of double taxation which will be dealt with separately.

JURISDICTIONAL LIMITS

The power of taxation of every state is necessarily confined to its territory. As a rule, a state cannot, on the simple ground that the taxpayer belongs to its nationals, tax a person, although he have no residence, no property or interest whatsoever in the respective state.[22] According to Swiss jurisprudence a state can only tax a person if this

19. E. g., a person with an amount of property not exceeding Frs. 10,000 is granted an exemption of Frs. 4,000 of the yearly income, whereas a person owning more than Frs. 20,000 has only an exemption of Frs. 2,000.

20. Except the "Loetschberg" Railroad with its line of great scenic beauty connecting the Cantons of Bern and Wallis.

21. Such a clause would also be superfluous on account of the comparatively small territory of Switzerland.

22. The federal "Militaerpflichtersatz" tax is an apparent exception to this rule. In Switzerland military service is compulsory for every male citizen from the 20th-48th year. Those being disabled have to pay a tax until they are 40 years old. They are subject to the tax, even if they reside abroad, provided they do not serve in the foreign army. The particular feature of this tax is the fact that also aliens residing in Switzerland are subject to it in the absence of contrary provisions of a treaty. The law further exempts aliens of those countries which do not exact a similar tax or military service from Swiss subjects.

person is subject to the state's jurisdiction on account of the taxpayer being personally or economically connected with such state. This rule can best be illustrated by the provisions of the Federal Extraordinary War Tax:

The personal relation exists according to this law in the following cases:

(a) If a person resides in the Swiss territory (or in the case of corporations, if they have a seat there).

(b) If a person, though temporarily, stays in and is engaged in any profession or trade in Switzerland.

(c) If a person, though not engaged in business, stays in Switzerland for more than six months.

The economic relation is established in the case of individuals or corporations, if they:

(a) Own real estate in Switzerland.[23]

(b) Are owners or partners of enterprises totally or partly situated in Switzerland.

These principles, subject to small modifications, are embodied in most of the cantonal and federal tax laws and are constantly applied by the courts or the Tax Appeals Commissions.

DOUBLE TAXATION

The prohibition of double taxation is a genuine product of Swiss constitutional law and the respective article of the federal constitution was not, like others, more or less copied from the United States constitution. For, in this country, a State is not constitutionally prevented from taxing a person's property which is subject to taxation in other States. The meaning of the Constitution is not to forbid double taxation within a particular Canton, but among them. Consistently, a Canton may tax the same property twice by different laws, or different municipalities of the same Canton, may, in the absence of cantonal legislation to the contrary, tax the same objects. The purpose of the prohibition of double taxation is to prevent taxation by different Cantons of the same person for the same object. Consistently, it is not double taxation in the legal sense, although in the economic one, if Canton A imposes a tax on the profits of the X Company and the Canton B imposes a tax on the dividends in the hands of the shareholders of the said company, because the corporation and the single shareholders are different persons. But it would be double taxation, if the X Company has not all shares outstanding and is obliged to pay taxes for its profits as well as for the dividends derived from those shares which are owned by the corporation itself. Nothing is of course easier than to relieve the company from this kind of double taxation.

When the article forbidding double taxation was inserted—in 1874—it was the idea to make afterwards detailed provisions in a federal law to carry out the principle formulated by the constitution. There are several drafts that never went into effect. The whole matter is much too complex to be regulated by statute. Therefore, it was entirely left to the federal jurisprudence which developed a vast body of case law in the real Anglo-American sense. For, the court do not apply legal theories and doctrines, but they go into each case and the particular circumstances thereof and compare them with the precedents. It is impossible within the scope of this survey to discuss the very interesting jurisprudence which affords the Swiss taxpayer a very valuable protection. But as aforesaid, this protection does only operate in favor of intercantonal taxation, but does not regard internal cantonal nor international double taxation.[24]

HOLDING AND TRUST COMPANIES

The favors accorded to Holding and Trust Companies by Swiss taxation are one of the latter's leading features. The basic idea of these privileges is to avoid double taxation (in the economic sense). Such double taxation would result and results, if the controlling company would be subject to the same tax rate as the controlled companies. Therefore, Holding and Trust Companies are granted an exceptional position by the federal and many cantonal tax laws.

The Canton of Glarus has for many years past subjected Holding and Trust Companies to a very favorable taxation. The actual Glarus tax law provides that Holding and Trust Companies with their seat in the Canton of Glarus have not to pay any income tax and only a yearly capital stock tax of 40 Cts. per Frs. 1,000 of the issued capital. Thus Glarus has become the seat of many powerful Swiss and foreign corporations.

The Canton of Schaffhausen followed the example of Glarus and enacted a still more favorable tax law than Glarus, so that the Canton of Schaffhausen could be called the "Swiss Delaware."

The Zurich tax law in its turn provides that Holding and Trust Companies have not to pay any income tax, but only a capital stock tax of 50 Cts. per Frs. 1,000 of the issued capital. The Canton of Zurich has of recent years become the seat of a great number of Holding Companies, among which are e.g. the Sulzer Bros. Engine & Iron Works, the Bank for Oriental Railroads, the Bally Shoe Co., etc.

The Federal Extraordinary War Tax Law for which the Zurich tax law more or less stood as a model provides that Holding and Trust Companies have to pay only half the tax of other corporations.

The following figures will show that the privileges so granted are of great financial importance:

Cantons—	Difference between amounts of taxes paid by an ordinary corporation and a holding company
Zurich	16,687.50
Glarus	11,587.50
Schaffhausen	11,077.50
St. Gall	10,487.50
Geneva	10,037.50
Basle-City	7,687.50
Aargau	6,695.50
Solothurn	5,287.50

The advantages enjoyed by Holding and Trust Companies are best illustrated[25] by the following table showing in percentages the ratio between the

23. Ownership of personal property also gives, according to the Swiss doctrine and jurisprudence, no jurisdiction and no power to tax either the property itself, nor its owner, if he is out of state. This is expressed by the following civil law rules: "Mobilia personam sequuntur" or "Mobilia ossibus inhaerent."

24. This kind of double taxation can only be avoided by treaties or international conventions. The problem of international double taxation is being studied by the League of Nations.

25. G. Wettstein in the London Stock Exchange Gazette of December 7, 1922, No. 1145.

taxes to be paid by an ordinary corporation and by a Holding or Trust Company:

Cantons—	Holding and Trust Companies pay the following percentages of the taxes imposed on ordinary corporations
Schaffhausen	14%
Zurich, Glarus	15%
St. Gall	17%
Basle-City	25%
Aargau	39%
Geneva	46%
Solothurn	64%

It is obvious that many corporations are trying to be classified as Holding Companies. But the law only privileges corporations which hold and administrate corporate interests or participations therein.

The exceptional position so held by Holding & Trust Companies has often been criticized but is not likely to be done away with; for it is an excellent means in the hands of a financial policy tending to attract foreign capital and seeking to strengthen finance in Switzerland.

LATIN-AMERICAN LEGISLATION

Argentina—Obligatory Savings Law in Bolivia—Chili Amends Law as to Legal Status of Women—Creates Official Bar Associations With Disciplinary Powers—Colombia Makes Contract With Noted Italian Criminologists to Study Conditions There and Make Recommendations — Snake Bite Legislation in Costa Rica — Ecuador — Labor Code Enacted in Guatemala—Honduras—Organic Law and Regulations on Alienage in Mexico—Nicaragua—Panama—Peru—Salvador—Venezuela

Argentina

Legislation, 1925

In the 64th session of Congress (1925-1926), only eleven laws were enacted, of which the following alone are of general interest:

Law 11,320 (vetoed by the President) making it illegal to keep shops open after eight P. M., with a few exceptions, e. g., restaurants, bars, newsstands, cigar stands, etc.

Law No. 11,323—Federal intervention in the Province of San Juan for the purpose of reorganizing executive, legislative, judicial and municipal administration of said State.

Court Decisions

Coelho v. Province of Tucuman, 143 Supreme Court Reports, p. 175, May 4, 1925. The External 5% Bonds of the 1909 issue were issued reading—"Interest . . . payable upon presentation of annexed coupons in Paris in francs; in Buenos Aires in gold pesos." Upon presentation by a foreign bondholder in 1921 of the coupons in Buenos Aires, the Province refused to pay except at the then already depreciated rate of exchange for francs. The bondholder sued the Province to compel payment in gold pesos. The Province claimed that a prior decision of the Supreme Court (Case of Baron, Vol. 193, p. 48) was not applicable, as there the plaintiff was a purchaser at the time of the original issue; in the present case plaintiff was merely a later purchaser for speculation, and that the sole purpose of the stipulations in the original loan contract (the general bond) and the recitals in the bonds and coupons was to give the original takers the right to collect in francs in France, and the original Argentine purchasers the right to collect in Argentine in pesos.

The court held, on the contrary, that there was a clear intention, especially by the express language of the general bond, which stated the place of payment (although not the currency) "at the election of the bearer," to give all bondholders, present or future, and at any time, the option, and therefore the general rule of the Civil Code that in alternative obligations it is the debtor, not the creditor, who has the right of election, was not applicable, and, accordingly, rendered judgment against the Province for the amount and in gold pesos.

Bibliography

Leyes nacionales sancionadas por el Congreso Argentino durante el periodo legislativo de 1925-1926. B. A. (Lojonam), 1926, 14 pp.

Leyes usuales de la Provincia de Mendoza y sus decretos reglamentarios—hasta al 31 de Diciembre de 1924. Recopiladas por Bernardo A. Benzoni y Basilio C. de Larrea. 3 vol., Buenos Aires (G. Kraft), 1925.

Includes, inter alia, the constitution, Codes of Civil and Criminal Procedure, police, water, tax, elections, municipal, civil registry, labor.

A. M. Candisti: Historia de la institución consular en la antiguedad y en la edad media. Buenos Aires, 1925.

P. J. E.

Bolivia

Legislation, 1924

Jan. 8 (Anuario, p. 14)—Amending laws as to the National Bank (Banco de la Nación Boliviana).

Jan. 12 (Anuario, p. 25)—Prohibits immigration of persons suffering from contagious or mental diseases, cripples, blind and deaf-mutes and requires vaccination and health certificates.

Jan. 12 (Anuario, p. 26)—Establishes an export tax of 20 centavos per metric hundredweight of lead.

Jan. 12 (Anuario, p. 29)—Amends the export tax law on silver.

Jan. 16 (Anuario, p. 41)—Inheritance tax on forced heirs, on a sliding scale ranging from 1 to 5½%.

Jan. 16 (Anuario, p. 43)—Export tax on tin.

Jan. 19 (Anuario, p. 55)—Workmen's Compensation Act.

Jan. 21 (Anuario, p. 60)—Export tax on rubber.

Jan. 25-Dec. 1 (Anuario, p. 65-759)—Authorizing loans for the Potosi-Sucre railroad.

Jan. 25 (Anuario, p. 72)—Obligatory savings law for employees; employers must deduct and deposit 5% of salaries and wages. *Executive Regulations*, July 21-Sept. 9 (Anuario, pp. 536, 597).

Jan. 31 (Anuario, p. 84)—Election law.

Feb. 1 (Anuario, p. 132)—Declares that law of Dec. 19, 1905, abolishing imprisonment for debt, does not repeal Art. 521 of the Commercial Code or Art. 634 of the Penal Code, as to imprisonment of fraudulent bankrupts.

Feb. 2 (Anuario, p. 132)—Tax on transfers of real estate, of either 1, 1½ or 2% depending on the amount.

Feb. 22 (Anuario, p. 176)—Amends the Stamped paper tax law of Nov. 10, 1915.

Feb. 28 (Anuario, p. 229)—Prohibits sale of liquor between noon Saturday and noon Monday.

Feb. 28 (Anuario, p. 230)—Export tax on antimony.

Resolution of March 18 (Anuario, p. 255)—Approves the Commercial Treaty with Germany of July 22, 1908, as modified by convention signed at La Paz, March 12, 1924.

Sept. 4 (Anuario, p. 584)—Exempts nitrate fertilizer for use in agriculture from import duties.

Sept. 5 (Anuario, p. 588)—Requires proof of payment of national, departmental and municipal real estate taxes as a prerequisite to the notarial execution or registration of instruments relating to the property.

Oct. 11 (Anuario, p. 654)—Adopts as law Executive Decree of Aug. 21, 1920, on bankruptcy proceedings.

Oct. 14 (Anuario, p. 658)—Approves the Extradition Treaty with Brazil, signed at Rio de Janeiro, June 3, 1918.

Oct. 15 (Anuario, p. 666)—Approves the Convention with Great Britain, signed April 5, 1920, as to false labels of origin.

Oct. 16 (Anuario, p. 668)—Approves the Convention and resolutions of the South American International Police Conference, Buenos Aires, Feb. 29, 1920.

Nov. 21 (Anuario, p. 736)—Lighthouse labor law; and other labor provisions, as to workmen's compensation (Art. 2), annual bonus equal to one month's salary (Art. 3), discharge and arbitration of disputes between master and servant (Arts. 4, 7).

Bibliography

Anuario Administrativo de 1924. Compilado por Remy Rodas Eguino. La Paz (n. d., received 1926).

Annual session laws and administrative acts.

P. J. E.

Chile

Legislation, 1925

Decree—Law 403, March 19 (Boletin de las Leyes, June, p. 3211)—Organizes the Council of National Defence.

Decree—Law 404, March 19 (Boletin, June, p. 3227)—Authorizes the President to mobilize necessary industries in case of war.

Decree—Law 415, March (Boletin, June, p. 3199)—Imposes a sales tax on toilet articles.

Decree—Law 455, July 16 (Boletin, July, p. 3580)—Reclassification of the functions and duties of the Cabinet officers and governmental departments.

Regulations No. 1915, June 16 (Boletin, p. 3716)—Of Decree—Law, 445, of March 20, on irrigation.

Decree—Law 379, March 18, 1925—Workmen's Compensation Law, amending and correcting Law No. 4055, of Sept. 8, 1924, and decreeing and incorporating the authentic text thereof. Employees permanently incapacitated are entitled to an annuity of 60% of their annual salary (Art. 13). In case of death, the widow is entitled to an annuity of 20% of the annual salary; minor children, until their majority, to an annuity of 40%. Procedure is before the Justices of the Peace (jueces de letras). (Diario Oficial No. 14, 131, March 19, 1925; Boletin de las Leyes, March, p. 1799). Executive Regulations No. 238, March 31, 1925. (Boletin de las Leyes, March, 1925, p. 2025 seq).

Decree—Law 328, March 12, 1925 (Diario Oficial No. 14128, March 16). Boletin de las Leyes, March, p. 1163)—Amends the law as to the legal status of women. They are given the *patria potestas* on the same terms as the father, in the latter's death, absence, etc.—losing it, however, on remarriage. (Art. 2, 3, 4). Legal disability to act as witnesses is removed (Art. 7) and also, in part, to act as guardians (5, 6). Wife's separate estate may be provided for by antenuptial contract, and she has a separate estate as to her own earnings and may sue and be sued in regard thereto. (Arts. 8-12.)

Decree—Law 344, March 16, 1925 (Diario Oficial No. 14129, March 17; Bol. de las Leyes, March, p. 1167)—Amending Art. 456 of the Code of Civil Procedure, so as to abolish the technical requirement of judicial confession of a private instrument, in the case of duly protested bills of exchange and checks.

Decree—Law 368, March 18, 1925 (D. O. No. 14134, March 24; Bol. de las Leyes, March, p. 1142)—Approves the Pan-American Postal Convention of Buenos Aires, Sept. 15, 1921.

Decree—Law 414, March 19, 1925 (D. O. No. 14134, March 24; Bol. de las Leyes, March, p. 1508)—Amending Decree—Law 93 of Nov. 13, 1924; as to dealings on the exchanges in company shares, stamp tax, etc.

Decree—Law 416, March 19, 1925 (D. O. No. 14133, March 23; Bol., March, p. 1511)—Amending Law No. 3929, of June 2, 1923, as to tax on inheritance and donations *causa mortis*. The tax ranges from ½ to 10% (amounts over 6,000,000 pesos) for children, and up to 27% for remote collaterals and strangers.

After death safe-deposit vaults may only be opened in the presence of a Notary, under penalty of personal liability for the tax and a heavy fine. Common informers as to violations are entitled to 25% of the fine.

Decree—Law No. 342 (D. O. No. 14129, March 17, 1925; Bol., March, p. 1577)—*Organic Railroad Law*, repealing Law of Aug. 6, 1862, and amending Decree—Law 160 of Dec. 18, 1924; applicable to all existing and future railroads, but safeguarding vested rights of privately owned roads (Art. 1). The right to grant concessions is vested in the President, but no concession is required for a private railroad wholly within private lands (Art. 2); minimum term of a concession is 30 years, maximum 60 (Art. 1st); renewable for periods of 30 years, upon certain conditions (Art. 26 seq.).

Bonds may not be issued except after the capital stock is fully paid, may not exceed twice the capital, must mature prior to the expiration of the concession, and permission of the President is required for issuance (Art. 17). The State may by special Congressional law acquire any railroad enterprise at the appraised value, plus 10%, if within 20 years (Art. 28, 29); port terminal facilities, through traffic arrangements and other acts of cooperation between railroads are obligatory (Art. 51 seq.). Obligations as to service are laid down in detail (Art. 58-99); provision is made for gates at road-crossings; tariffs are subject to regulations by the Railroad Council, and railroads subject to state inspection by a Bureau for Railroad Inspection in the Department of Public Ways and Roads (Art. 100-121).

Decree—Laws 308, 329 (D. O. 14129, March 17, 1925; Bol., March, p. 1715, 1732)—Creates a Superior Council for Social Welfare, and provides for the erection or acquisition of low-priced houses, and the financing thereof.

Decree—Law 355 (D. O. 14132, March 21, 1925; Bol., March, p. 1735)—Organic Health Boards law.

Decree Law 356 (D. O. 14131, March 19, 1925; Bol., March, p. 1778)—Amends Decree—Law 188 of December 31, 1924, Labor Law (see 1926 Bulletin).

Decree—Law 315 (D. O. 14124, March 11, 1925; Bol., p. 1399)—Creates a Bureau of National Property (Inspección de Bienes Nacionales) for inspection, registry, lease, etc., of public lands and other property.

Decree—Law 345, March 17 (D. O. 14129, March 17, 1925; Bol., March, p. 1313)—*Copyright Law*—Registration is effected in the National Library; copyright is extended to a broad field, including radio, or "any other means of reproduction, multiplication or diffusion"; copyright is for the life of the author and 20 years more. Copyright of foreign works is granted on a basis of reciprocity. Executive Regulations, No. 1063, March 19, 1925 (Bol., p. 1867).

Decree—Law 407, March 19, 1925 (D. O. 14135, March 25; Bol., March, p. 1227; rectified publication in D. O. 14154, April 18; Bol., April, p. 2131). *Notarial Law*—Notaries must be Chileans, 25 years of age, have practiced law for more than 2 years and of good character (Art. 3) and can hold no other public, national office (5) or practice law (6). Competitive examination required prior to appointment (7 seq.). The law is substantially modernized in some respects, e. g., printed, typed or photostatic copies may be issued and thumb-prints may be required on instruments if either party insist.

Decree—Law 363, March 17, 1925 (D. O. 14433, March 23, 1925; Bol., p. 1173)—Organic Law of Justices of the Peace, *Juzgados de letras de menor cuantia*.

Decree—Law 406, March 19, 1925 (D. O. 14137, March 27, 1925; Bol., p. 1213)—Regulating the profession of the law—Official Bar Associations are created (*Colegios de Abogados*), with a general Council at the Capital, and provincial councils at the seats of the appellate courts; these councils are composed of from 9 to 25 members, elected by vote of the members of the bar, inscribed in each association; the chief duties of the councils are to maintain professional discipline, acting as a grievance committee, recommend candidates for the judiciaries, settle disputes as to fees between lawyers and client, suspend and with the approval of the Supreme Court, disbar lawyers. Lawyers must pay an annual license fee, fifty per cent of which is turned over to the Bar Association for library, benefit and other purposes.

Decree—Law 425 (D. O. 14137, March 27, 1927; Bol. March, p. 1262)—On abuses of publicity. Copies of all publications are required to be filed in several public offices; and notice of proposed publication of a new periodical must be filed, with full information as to publisher, editor, owner. Periodicals must free of charges publish rectifications or replies as conspicuously as the original article (Art. 8). Provocation to sedition and crime, by press or orally, is made criminal Art. 12-13); the law of libel and slander and offences against morality and decency is covered, in part, by this law

(Art. 17 seq.). The Courts are given the power to enjoin publication of any information relating to a suit being tried before them (Art. 27).

Decree—Law 252 on Electric Service (see last year's Bol., publication D. O. No. 14160, April 25, 1925; Bol., April, p. 2233).

Decree—Law 330 (D. O. 14144, April 4, 1925; Bol. 2162) —Amending Decree—Law 122 of Jan. 23, 1925; supplementary Income Tax law.

Decree—Law 358, March 17, 1925 (D. O. 14143, April 3, 1925; Bol., April, p. 2342)—Industrial Property Law (patents and trademarks). An elaborate statement is made of what is and is not patentable (Art. 3, 4). Patents are granted for 10, 15 or 20 years according to the fee paid, but must be worked within two years; renewals may be had upon special application for an additional 10 years.

Law No. 4054, Sept. 6, 1924 (D. O. 14161, April 27, 1925; Bol., April, 23621)—Declaring insurance against sickness and accidents of employees obligatory.

Decree—Law 442 (D. O. 14145, Bol., April, 2377)—Dictating provisions for the protection of working mothers.

P. J. E.

Colombia

Legislation, 1926

Decree 25 of 1926, Jan. 8 (Diario Oficial No. 20098, Jan. 16), regulative of Art. 3 of Law 84 of 1925. (See 12 A. B. A. Jour., 255)—This decree abrogates Art. 23 of Decree 59 of Jan. 12, 1924, on income tax.

Decree 51, Jan. 13 (D. O. 20103, Jan. 22)—Regulative of Art. 114 of the Penal Code and Law 81 of 1922, on commutation of sentences.

Resolution 141, Ministry of Government, March 22 (D. O 20156, March 26)—Ruling that protests of bills of exchange are subject to registry in the Register of Public Instruments, and that assignments of rights in estates of decedents should be recorded in liber 2 of the Register.

Resolution 222, Ministry of Government, April 6 (D. O. 20168, April 13)—Amending the first part of the above-mentioned Resolution 141, and ruling that, pursuant to Art. 13 of Law 26 of 1922, which amends Art. 862 of the Code of Commerce, protests of bills of exchange are not subject to registry but are subject to a fixed tax of two pesos.

Decree 802, May 18 (D. O. 20203, May 25)—Regulative of the income tax, and impliedly repealing Decree 59 of 1924. Art. 48 of Decree 802 is amended by Decree 1607, Sept. 27 (D. O. 20309, Sept. 29).

Decree 755, May 7 (D. O. 20211, June 4)—On pearl fishery.

Decree 817, May 19 (D. O. 20212, June 5)—On customhouse brokers.

Decree 848, May 22 (D. O. 20216, June 10)—Regulative of the stamp tax on Colombian passports. Art. 8: "Aliens traveling under passports issued in Colombia by the Minister or a Consul of the country of which they are citizens are not required to pay tax, nor do they need the visé of the Colombian officials."

Decree 868, May 26 (D. O. 20216, June 10)—On the collection of the fluvial tax.

Decree 828, May 20 (D. O. 20217, June 11)—Amending the Postal and Telegraph Code.

Decree 921, June 4 (D. O. 20221, June 16)—On mail containing securities and valuables. Amends the Postal Code.

Decree 923, June 4 (D. O. 20222, June 17)—Regulations of government telephone service.

Decree 953, June 10 (D. O. 20223, June 18)—Requiring corporations, national or foreign, doing business in Colombia, to present to the Office of the Superintendent of Banks an authenticated copy of its general balance sheet. Failure to comply subjects the corporation to a penalty of from $100 to $500. Corporations commencing business in Colombia after the date of this decree are required to give notice of the commencement of business to the Office of the Superintendent of Banks. (Note: This decree is based on Art. 586 of the Code of Commerce, which provides that the managing directors of a corporation shall present to the general meeting of stockholders a statement of the affairs of the corporation, accompanied by a balance sheet and an inventory of assets, and that they shall send a copy thereof to the Executive Power, and another copy to the Judge of Commerce where the corporation is domiciled.)

Resolution 57, Ministry of Finance, May 20 (D. O. 20240, July 9)—Prescribing the manner of cancelling documentary stamps.

Resolution 63, Ministry of Finance, May 24 (D. O. 20242, July 12)—Distinguishing between stamp taxes and taxes payable in stamps, and referring to Resolution 222 of the Ministry of Government.

Decision of Supreme Court, June 21 (D. O. 20247, July 17)—The Court declines to pass upon the constitutionality of the Judicial Code of 1923, in view of the fact that Law 26 of 1924 suspended the date of taking effect thereof.

Decree 1194, July 19 (D. O. 20252, July 23)—Regulating transportation on the Magdalena River under Law 4 of 1920.

Decree 1242, July 24 (D. O. 20263, Aug. 5)—Regulative of Law 72 of 1925 on petroleum and other hydrocarbons.

Law No. 1, Aug. 6 (D. O. 20267, Aug. 11)—Authorizing the Executive to enter into a contract with the Scadta, reestablishing mail and passenger service by hydroaeroplane between the towns of Girardot and Neiva. (Note: The Scadta Company for several years has been operating a regular semiweekly service by plane along the Magdalene River between Barranquilla and Girardot, a distance of 625 miles.)

Decree 1277, July 28 (D. O. 20268, Aug. 12)—Regulating the telegraph service.

Decree 1554, Sept. 17 (D. O. 20302, Sept. 21)—Amending Art. 3 of Decree 923. Press dispatches entitled to half rates between 11 A. M. and 12 M. and between 5 and 6 P. M.

Decree 1556, Sept. 18 (D. O. 20302, Sept. 21)—Superseding Decree 1194 of July 19.

Law 12, Sept. 25 (D. O. 20307, Sept. 27)—On instruction in hygiene and the sanitation of the principal cities of the Republic.

Law 36, Oct. 22 (D. O. 20332, Oct. 27)—Requiring stores, pharmacies, factories, shops, and similar commercial establishments to provide seats in sufficient number to accommodate their employees and clerks so that the latter may rest when their duties permit. (This law is in line with labor legislation in other countries.)

Law 46, Nov. 10, 1926 (D. O. 20345, Nov. 12, 1926)—Approving Extradition Treaty with Argentina, signed at Buenos Aires, Aug. 28, 1922. Extradition of citizens of the extraditing nation is excluded. (Art. 3, Subd. 4.)

Law 47, Nov. 10 (D. O. 20346, Nov. 13)—Amending Law 71 of 1917, relative to public lands. To promote colonization.

Law 57, Nov. 16 (D. O. 20349, Nov. 17)—Establishing one day of rest in seven for workmen. Prohibits Sunday work in industrial and mercantile shops, except, under official license, for certain special industries or work; in such cases, one day of rest in seven is obligatory. The law is also applicable to domestic servants.

Law 67, Nov. 23 (D. O. 20354, Nov. 23)—On expropriation. This law does not embrace the whole subject; it is merely supplementary to previous statutes dealing with the taking of private property for public use.

The Government is authorized to purchase property needed for a public use by direct negotiations with the owner, without resort to condemnation proceedings (Art. 1 seq.). Third party proceedings (of mortgagees, creditors, etc.) shall be no bar to the consummation of condemnation, but the indemnity paid may be deposited in court subject to their claims (Art. 5). The law is strengthened in reference to condemnation for water, light and power, and the provisions of the railroad condemnation law (Law 36 of 1915) are extended to all public utilities (Arts. 6-8). The proceedings for valuation are also amended (Art. 9).

Law 68 of 1926 (Nov. 23, D. O., 20355, Nov. 24)—Provides, *inter alia*, that any participation due to departments or municipalities by virtue of law or departmental ordinance shall be paid directly by the collecting officials (Art. 4). The national subsidy for highways and cableways is fixed at $4,000 and $7,000, respectively.

Law 72 (Nov. 29, 1926, D. O. 20360, Nov. 30)—Charter for the city of Bogota, giving it special powers not vested in other municipalities.

Law 74, Nov. 30 (D. O. 20361, Dec. 1)—On the promotion of agriculture and immigration. This law provides for the organization of the National Agricultural Institute and rural schools for agricultural, stock-raising, and agricultural statistics and expositions; for colonization and immigration; for the exploitation of national forests; etc. This law is supplementary to prevous statutes on the same subjects.

Law 75, Nov. 30 (D. O. 20362, Dec. 2)—Increasing the capital of the Agricultural Mortgage Bank and amending Arts. 12, 9 and 28 of Law 68 of 1924.

Contract (D. O. 20363, Dec. 3)—Entered into between the Government and three eminent Italian criminologists and penologists, Drs. Cordoba, Della Vecchia and Ghedini, whereby

they are to go to Colombia for one year, study conditions, make reports, and draft bills on penal reform to be presented to Congress. (This is but one example of the recognized leadership which the Italian school has gained in the realm of criminology and penology during the past decade.)

R. C. B.
P. J. E.

Court Decisions

In re *Castro*, Supreme Court, Dec. 17, 1925—(Gaceta Judicial, 1663, April 14, 1926, p. 155). *Held* that the so-called administrative courts are not part of the judicial power and therefore the constitutional provision against suspension of judges during their term of office is not applicable. *Further held* that the Supreme Court cannot pass upon whether laws have been duly voted upon.

In re *Mendoza*, Supreme Court, Dec. 12, 1925 (G. J., No. 1665, April 22, 1926)—upheld the constitutionality of the Banking Law (45 of 1923). Modeled in large part on the New York banking law and federal reserve acts and National Banking Acts. Inspection of banking operations even though carried on by individuals and the creation of the office of banking superintendent fall within the police power and do not infringe the constitutional guaranty of liberty of industry. Articles 20 and 73 of the law were, however, held unconstitutional in part, the former giving the Superintendent the right to name deputies, in violation of the constitutional right vested in the President; and the latter (providing that if the Appeals Board does not decide an appeal from the Superintendent within 10 days, his decision shall be final), being in violation of the due process clause.

Matter of *Martinez v. Anglo-Colombian Development Co.*, Supreme Court—Part for General Business, Feb. 15, 1926 (Gaceta Judicial Nos. 1685 and 1686, July 24, 1926, p. 338)—Jurisdiction is vested in the Supreme Court of controversies arising from contracts entered into by the National Executive, to the exclusion of any jurisdiction in the Council of State; the latter being therefore without jurisdiction to consider an appeal from an executive resolution dealing with a contract of the National Executive.

Complaint of *Valdes et al.*, Supreme Court, Nov. 18, 1926 (Diario Oficial No. 20362, Dec. 2, 1926)—*Held* that the articles in the Executive Decree 1694 of Nov. 11, 1925, requiring owners or concessionaires of platinum mines to present topographical surveys to the Revenue Inspector and requiring the approval of the Government for sales and leases thereof, imposed restrictions and limitations on private property not authorized by any statute and are therefore beyond the constitutional power of the Executive. Other articles, requiring the presentation of title deeds to the Inspector and requiring operators to furnish lodging and transportation to revenue officials were upheld, as being proper executive regulations of the law as to statistical information and collection of revenues, respectively.

P. J. E.

Costa Rica

By *Legislative Decree No. 9* of the 17th February, 1926, the National Insurance Bank was ordered to assume the effective monopoly of fire insurance beginning on that date. It was provided that existing insurance contracts were to be binding on the parties until their expiration.

By *Presidential Decree No. 5* published in the Gaceta Oficial of the 13th May, 1926, new provisions were made for the collection of the special tax on coffee and sugar originating in the Municipality of Turrialba.

By *Presidential Decree No. 16* of the 22nd May, 1926, the National Insurance Bank was directed to assume the exclusive monopoly of insurance for accidents under the Workmen's Compensation Act beginning the 1st June, 1926. Under the same decree, the Workmen's Compensation Act was put into effect.

By *Legislative Decree No. 13* published in the Gaceta of 29th May, 1926, certain enterprises must keep on hand snake bite serum, and a penalty is provided for failure to do so. Railroad companies are to receive as passengers people who have been bitten by snakes, transportation charges to be paid by the Government.

By *Legislative Decree No. 12* published in the Gaceta of 30th May, 1926, new provisions are made for presidential elections. If at the popular election no candidate receives a majority of the votes cast, the two leading candidates are again voted on by the public, the candidate then having the majority to be declared president.

By *Legislative Decree No. 38* of the 20th July, 1926, a traffic law was enacted which provides for the registration of chauffeurs, automobiles, and tractors, imposes a tax on automobiles for hire and trucks, establishes rules of traffic, and prescribes penalties.

By *Presidential Decree No. 22* of the 2nd August, 1926, all goods imported into Costa Rica must be accompanied by an original invoice in Spanish and two copies. It is expressly stipulated that the consular invoice or any other document cannot be substituted therefor. The decree prescribes the information which must be contained in the original invoice.

By *Legislative Decree No. 92* of the 24th August, 1926, Article 37, a so-called Superior Tribunal of Arbitration is created.

By *Legislative Decree No. 5* of the 21st September, 1926, new provisions were made for the eviction of squatters from privately owned lands.

By *Legislative Decree No. 11* of the 22nd October, 1926 various articles of the Fiscal Code are modified, and new provisions made for the denouncement, sale and lease of Government lands.

By *Legislative Decree No. 46* of the 22nd December, 1926, Congress approved the contract between the Republic of Costa Rica and the Central Union Trust Company of New York for a loan of eight million dollars.

W. K. J.

Ecuador

Legislation, 1926

Decree of Military Junta, Jan. 10, 1926 ("Registro Oficial" No. 154, Jan. 14)—Accepting resignations of members of the Junta of Provisional Government and appointing new members.

Decree No. 17, Jan. 18 ("R. O." 158, Jan. 19)—Convening the Constituent Assembly for May 24th.

Decree No. 18, Jan. 18 ("R. O." 160, Jan. 21)—Publishing corrected version of Decree dated Dec. 5, 1925, on Bills of Exchange and Promissory Notes. Ecuador adopts the plan drafted by the Central Executive Council of the Inter-American High Commission in 1916 which was based on the Uniform Regulation approved at The Hague in 1912. (Cf., 12 A. B. A. Jour. 247.) This Negotiable Instrument Law supersedes Titles VIII and IX (articles 399 to 490) of the Code of Commerce.

Law of Public Charities, Feb. 12 ("R. O." 182, Feb. 16).

Law of Public Sanitation, Feb. 23 ("R. O." 194, March 2).

Decree, March 18 ("R. O." 210, March 20)—Amending Art. 5 of the Law of Internal Taxes of Dec. 19, 1925.

Decree of Military Junta, April 1 ("R. O." 1, April 3)—Creates the office of Provisional President of the Republic, superseding the Junta of Provisional Government, and appoints Dr. Isidro Ayora as Provisional President.

Executive Decree, April 1 ("R. O." 1, April 3)—Appointment of Cabinet.

Decree of the Junta of Provisional Government, March 31 ("R. O." 4, April 7)—Amending the Law of Public Charities of Feb. 12.

Executive Decree, April 24 ("R. O." 28, May 6)—Regulations for Prevention of Collisions at Sea.

Executive Decree, June 1 ("R. O." 48, June 1)—Customs Tariff: Imports and Export Duties. Abrogates the tariff of Oct. 20, 1917, and the Decree of Nov. 21, 1925.

Executive Decree, June 8 ("R. O." 54, June 10)—Regulations of the Law of Public Charities of Feb. 12.

Executive Decree, May 31 ("R. O." 59, June 16)—Rules of Navigation for the Merchant Marine.

"Registro Oficial" 67, June 25, contains a reprint of amendments to the Code of Civil Procedure. The following Legislative Decrees are printed in full: Oct. 25, 1918; Nov. 23, 1920; Oct. 11, 1921; Oct. 19, 1923; Oct. 19, 1923; Oct. 25, 1923; Oct. 28, 1925.

Executive Decree No. 19, July 3 ("R. O." 77, July 7)—Regulations of the Law of Public Sanitation of Feb. 23, 1926.

"Registro Oficial" 85, July 17, contains a reprint of certain penal laws. The following are printed in full: Law of Pardons and Commutation of Sentences, of Aug. 28, 1894; Legislative Decrees of Oct. 29, 1913; Oct. 5, 1918; Oct. 31, 1919, and Aug. 28, 1923, amending the Code of Criminal Procedure. Law on Administration of Penal Justice, of Jan. 23, 1907, and amendment thereto of Oct. 16, 1913. Legislative Decrees of Nov. 4, 1909; Oct. 23, 1913, and Oct. 8, 1921, amending the Penal Code. Law on False Testimony and

Perjury, of Oct. 25, 1924. Law on the Crime of Cattle-Theft, of Nov. 6, 1925; and article 3 of the Legislative Decree of Oct. 29, 1918, amending the Penal Code.

Executive Decree, July 17 ("R. O." 86, July 19)—Amending the Law of Internal Taxes of Dec. 19, 1925.

Executive Decree 130, Sept. 10 ("R. O." 133, Sept. 14)—Regulations for the leasing of national forests in the Oriental Region.

Executive Decree 133, Sept. 16 ("R. O." 138, Sept. 20)—Construing the fifth paragraph of article 7 of the Civil Code as applying to an illegitimate child instead of a legitimate child, and ordering the text of said article to be changed in conformity therewith in the next edition of the Civil Code.

Executive Decree 210, Dec. 1 ("R. O." 201, Dec. 4)—Amending article 109 of the Code of Civil Procedure, relative to the service of citations.

"Registro Oficial" 208, Dec. 13, contains a reprint of the Law of Civil Marriage; Executive Decree of November 10, 1902; and Legislative Decree of October 28, 1912.

R. C. B.

Guatemala

By *Presidential Decree* published on the *23rd June, 1926*, Customs Duties on tractors and machinery used in road construction were removed.

On *June 18th, 1926*, a decree was published approving the Postal Treaty between the United States, Spain, the Philippine Islands, and the Latin-American republics.

By *Presidential Decree No. 921* of the 30th June, 1926, a new "Book I" of the Civil Code of Guatemala was put in force. Book I deals with the subject of persons, and prescribes the rights and obligations of members of families, guardians and wards, and the like, and regulates marriage, divorce and legitimacy. It creates a registry of corporations and a registry of domiciled foreigners, both of which are new. The other books of the new Code are not expected for some time, and for this reason the Government has been requested by influential bodies of lawyers and merchants to suspend the enforcement of Book I until the rest of the Code is ready for enactment. However, to date Book I has not been suspended.

By *Legislative Decree No. 1434* of the 24th April, 1926, a Code of Labor was enacted. This Code provides for advance notice to employees who are not working for a specified period whose services are to be terminated. If notice is not given, extra salary must be paid instead. An eight-hour day is prescribed, with forty-eight hours maximum for the week. Employees are to be granted one day of rest a week, preferably Sunday. Special regulations are made for the employment of women and minors. A Department of Labor is created for the purpose of intervening in labor disputes which are to be submitted to committees of conciliation and tribunals of arbitration for adjustment. Apparently compulsory arbitration is established, though this is not clear. Strikes and lockouts must be announced publicly fifteen days in advance for employees of public service companies, and eight days in other cases. Three years' imprisonment is provided as penalty for violation of this provision. In case of strikes on railroads, wharves or in power plants, the Executive Power may operate these services during the strike. The Code of Labor does not apply to agriculture, but only to commercial and industrial enterprises. The Government is now working on the regulations which are to be issued under the Code, in which connection the commercial associations of Gautemala are being consulted.

By *Legislative Decree No. 1447* of the 1st May, 1926, a law was enacted for the regulation of insurance companies. Insurance companies must obtain a license from the Government to operate in Guatemala, and their representative must file a legalized copy of his power of attorney with the Government. Foreign life insurance companies must keep a sight deposit of fifty thousand dollars in a bank established in the Republic as a guarantee of the performance of their obligations. Life insurance companies pay to the Government three-fourths of one per cent of the premiums collected, whereas for fire, land and marine insurance the tax is two and one-half per cent.

By *Legislative Decree No. 1445* of the 1st May, 1926, the Legislative Assembly approved the convention for the protection of trade-marks which was entered into by Guatemala and Spain on the 29th May, 1925.

By *Legislative Decree No. 924* of the 8th September, 1926, a law was passed reorganizing the Department of Justice. This law defines the various offices in the Department of Justice, and prescribes the duties of the various officers.

By *Presidential Decree No. 923* of the 1st September, 1926, extensive regulations were prescribed for admission to the bar and the practice of law in Guatemala.

By *Presidential Decree No. 929* of the 2nd October, 1926, a previous decree depriving residents of the individual guarantee clauses of the constitution was repealed in view of the tranquil condition of the country.

By *Presidential Decree No. 927* of the 8th December, 1926, Presidential Decrees 917 and 918 which prohibited the admission into Guatemala of Jesuit priests were repealed.

On the *13th September, 1926*, the President of the Republic approved the by-laws of the new Central Bank of Guatemala which was established pursuant to the monetary and credit institution laws enacted the previous year. On the *20th September* the President approved a loan of five hundred thousand dollars from an American banking firm.

By the *Presidential Resolution* of the *16th October, 1926*, traveling salesmen do not need consular invoices for the samples they carry, and by putting up a bond, no duty will be charged on samples which are to be taken out of the country when the salesman leaves.

On the *26th October, 1926*, a supplement was published to the Commercial Convention between France and Guatemala of the 28th July, 1922. Guatemala is given the benefit of the minimum French tariff for its products, and France is accorded the privileges of the most favored nation for its exports to Guatemala.

W. K. J.

Honduras

Law Covering the Rights of Foreigners (Extranjeria)—This law defines who are citizens and who are aliens. It sets forth the conditions under which foreigners can become naturalized citizens of Honduras. It provides for the registration of all foreigners in Honduras, and prescribes their rights and obligations. Foreigners can not hold political office under penalty of expulsion, but this does not apply to teaching. Life, liberty and property are guaranteed, though by Article 30 foreigners must abide by the decisions of the Courts and not resort to diplomatic negotiations. The last part of the law provides for the expulsion of undesirable foreigners.

Congressional Decree No. 60 obligates all commercial corporations to pay a fee of $50.00 gold for having their juridic personality recognized in Honduras. A fee of like amount is prescribed for approving any extension of the time of duration of a corporation.

Congressional Decree No. 62 exempts from compulsory military service in time of peace all persons who are engaged in agriculture.

Congressional Decree No. 66 approves the contract which the Executive Power made for the settlement of the external debt of Honduras.

Congressional Decree No. 74 creates boards for the different departments for the examination of claims for damages due to revolutionary disturbances in recent years.

Congressional Decree No. 85 formulates a new code of agricultural procedure. This deals with the procedure to be followed in the sale and lease of Government lands and the adjudication of so-called "family lands" for the heads of families belonging to the laboring class.

Congressional Decree No. 86 approves the contract which was entered into between the Government of Honduras and Mr. William Henry King of London, representative of foreign bondholders. This contract provides terms of settlement for old Honduranean loans, the bonds for which are, for the most part, in the hands of British subjects.

Congressional Decree No. 89 approves the Pan-American Sanitary Code which was signed in Havana on the 14th November, 1924, by the various Pan-American countries represented. It represents a distinct step forward in the matter of sanitation.

Congressional Decree No. 101 gives the Executive Power full authorization to contract a foreign loan up to seven million dollars.

Congressional Decree No. 102 adopts as the monetary unit the lempira which is equal to one-half dollar in American money.

Congressional Decree No. 104 authorizes the Executive Power, in association with one or more American banks, to establish in Honduras a Bank of the Republic.

Congressional Decree No. 111 appropriates ten per cent

of the Customs Revenues to cover the interest and amortization of principal of the internal debt.

Congressional Decree No. 116 approves the Treaty of Commerce entered into between Honduras and Germany.

W. K. J.

Mexico

Legislation, 1926

Constitutional Law

Articles 82 and 83 of the Constitution, relative to qualifications for the Presidency of the Republic, have been amended. Although the majority of the State legislatures approved the amendments, Congress did not, in 1926, make the declaration required by Article 135 of the Constitution, and therefore the amendments did not become effective in that year. By virtue of the amendment to Article 82, the disability formerly arising from participation in any insurrection or rebellion is removed. The most significant feature of the amendment to Article 83 is that an ex-President is no longer disqualified absolutely from again serving; he is, however, disqualified from serving two terms in succession, and after the second term has been served the disqualification is absolute.

Organic Laws

Article 73 (XVII) of the Constitution authorizes the Congress to enact laws on general ways of communication and on posts and mails. In pursuance of this constitutional mandate, Congress in 1926 enacted a Railroad Law, a Law of Highways and Bridges, a Law of Electrical Communications, and a Postal Code, all of which were published in a supplement to number 46 of the "Diario Oficial" on April 26, 1926.

The Railroad Law of April 22, 1926, abrogates, by Art. 130, the Law of April 29, 1899 which formerly governed the subject, and defines (Art. 1) the railroads which depend from the federal government as follows: I. Those which connect two or more States; II. Those which are wholly or partially within the Federal District or a territory; III. Those which are wholly or partially within the zone of 100 kilometers from the boundary line with a foreign country or of 50 kilometers from the coast line; IV. Lines which connect with a railroad operating under a federal concession; V. All those which may be constructed or operated pursuant to a federal concession. The usual Calvo clause is set forth in Art. 25. Schedules, tariffs, and regulations are subject to the approval of the Secretariat of Communications and Public Works (Art. 43).

The Law of Highways and Bridges of April 22, 1926, defines (Art. 1) national highways as follows: I. Those which connect the capital of the Republic with maritime or border ports of entry, or with the capitals of States or territories; II. Those which connect one State capital with another or with the capital of a territory; III. Those which lie within two or more municipalities of the Federal District or of a federal territory; IV. Those which, in conformity with the requirements of the national interests, are declared national highways by the Executive, through the Secretariat of Communications and Public Works. Art. 3 defines national bridges as: I. Those which form an integral part of a national highway; and II. Those already constructed or which may be constructed over international boundaries. Art. 4 extends the Law to include bridges over rivers, inlets, lagoons, or canals dependent from the federal government, and bridges over national highways, even though such bridges are of merely local use. Art. 7 provides that national highways and bridges are property of public use and hence subject to the law of Real Property Belonging to the Federation, of December 18, 1902. The Executive is authorized, by art. 12, to create a national debt for the construction and improvement of national highways and bridges, and to issue highway bonds for the purpose. Art. 14 brings under federal jurisdiction those highways constructed for account of private parties: I. When they connect two or more States; II. When they lie wholly or partially within the Federal District or a territory; III. When a part of the highway comes within the zone of 100 kilometers from the boundary line with a foreign country or of 50 kilometers from the coast line; IV. When they are constructed or operated in pursuance of a concession granted by the federal government. Art. 15 requires that a concession be obtained from the Secretariat of Communications and Public Works for the construction and operation of the roads mentioned in the foregoing article. The usual Calvo clause is set forth in art. 21. The first transitory article continues the existence of the National Highway Commission created by the Law of March 30, 1925, which established a federal tax on sales of gasoline. (See 12 A. B. A. Jour. 264.)

The Law of Electrical Communications, of April 23, 1926, defines the same (art. 1) as including telegraphy, radiotelegraphy, telephony, radiotelephony, and all other electrical methods of transmission and reception with or without conducting wires, and of sounds, signs, or symbols. Art. 2 makes all installation for electrical communication dependent from the federal government, with the sole exception of telephone lines which lie wholly within the boundaries of a State and which do not connect with lines under federal jurisdiction or with lines in foreign countries. Art. 3 reserves to the federal government exclusively the operation of telegraph lines and the radiotelegraph and radiotelephone systems. Art. 11 requires all operators of electrical communications to be Mexicans. Art. 25 provides that concessions for the establishment and operation of installations for electrical communication dependent from the federal government shall be granted solely to Mexicans by birth or naturalization or to companies organized under the laws of Mexico. Art. 26 forbids the granting of a concession which will result in competition with the government lines of electrical communication or which will create a monopoly in favor of the concessionaire. Art. 32 requires the regulations and tariffs to be approved by the Secretariat of Communications and Public Works. Art. 56 requires wireless equipment to be installed on all vessels of Mexican registry having capacity for fifty persons or more, including crew, and on all air-craft used for the transportation of passengers. Art. 58: Any station on board a vessel of foreign registry or on a foreign air-craft, duly authorized by a government signatory or adherent to the International Radiotelegraphy Convention of London (1912) or to any other later Convention to which the Mexican Government is a party, shall be deemed to fulfill the conditions imposed by the Regulations of said Convention. Art. 65 makes radio broadcasting stations subject to the provisions of the laws protecting the artistic and literary property of composers and authors, and prohibits the relaying of programs except with the consent of the owner of the station broadcasting. Under art. 66, the installation and use of radio receiving apparatus is subject to regulation by the Secretariat of Communications and Public Works. Art. 77 provides for the secrecy of messages despatched over lines of electrical communications. Art. 83 establishes the punishment for violation of the secrecy of messages. Art. 91 abrogates the Decree of October 19, 1916, relative to radiotelegraph stations.

The Postal Code of April 22, 1926, governs the postal service; the inspection and personnel thereof; the administration, classification, transportation, and delivery of the mails; postage and the franking privilege; special delivery, registry, delivery C. O. D., postal insurance, postal savings, money orders, and identification cards; postal routes; post-offices and equipment. Art. 108 provides that the denomination and classification of mail in the international service shall be subject to the provisions of the Universal and Pan-American Postal Conventions, and to special treaties and compacts with other countries. Art. 119 provides for the inviolability of correspondence enclosed in sealed envelopes. Art. 456 requires all merchants to enroll in the Register of the post-office in the place of their domicile. Art. 457 abrogates the Postal Code of October 23, 1894, and its amendatory decrees of January 26, 1899; March 29, 1902; November 14, 1907; April 29, 1910; December 14, 1911; December 15, 1911; May 25, 1912, and February 8, 1923, and their respective regulations.

Alienage

The Regulations of the "Organic Law of Fraction I of Article 27 of the Constitution" were issued on March 22, 1926 ("D. O." No. 25, March 29). The law was summarized in 12 A. B. A. Jour. 266. Both the Law and the Regulations were digested and translated in full in a very interesting article by Frederick F. Barker, Esq., of Los Angeles, published by the Division of Commercial Laws, Department of Commerce, in its Comparative Law Series for June, 1926.

Article 27 of the Constitution of 1917 completely reversed the prior policy of Mexico toward aliens. For a period of seventy-five years, from the enactment of the Law of March 11, 1842, the policy was one which permitted the foreigner to acquire property and rights in Mexico on an equality with nationals, subject to certain restrictions which were not of an onerous nature. The policy inaugurated by the Constitution of 1917 is one which debars the foreigner from acquiring any property rights whatsoever, except upon express waiver of his right to appeal to his own government for protection through diplomatic channels. For these reasons, the Organic Law on Alienage and the Regulations thereof are of the utmost importance to aliens and foreign corporations owning property or

rights in Mexico. Those who acquired their rights prior to 1917 are affected by this legislation, despite art. 18 of the Regulations, which recites that none of the provisions of the Law or Regulations shall be applied retroactively to the prejudice of any person.

Article 4 of the Regulations provides that the articles of organization of stock companies, in addition to the data required by article 179 of the Code of Commerce, shall set forth the clause to which art. 2 of the Regulations refers, which clause shall likewise be printed on the stock certificates to the end that anyone coming into possession of such stock certificate shall be deemed to have accepted *ipso facto* the stipulation set forth in said art. 2. This clause or stipulation recites that an alien who acquires a right or interest in the company shall be considered a Mexican with respect thereto, and shall be deemed to have agreed not to invoke the protection of his government, under penalty of forfeiture of his right or interest. This waiver of the right of alienage on the part of a foreign stockholder was discussed by Lic. Lorenzo J. Roel in 9 A. B. A. Jour. 19-22.

Art. 10 provides that where rights were lawfully acquired by a foreign company or by a Mexican company with alien stockholders, prior to January 21, 1926, such rights may be retained by said company during the entire period of its duration according to its articles of organization. Art. 14 sets forth the data to be contained in the manifests required to be filed by alien landowners in the Secretariat of Foreign Relations before January 21, 1927, in pursuance of article 7 of the Law.

The so-called Alien Land Law and its Regulations, as well as the Petroleum Law, have been made the subject of numerous diplomatic notes exchanged between Washington and Mexico City, beginning on November 17, 1925, when the bills were under discussion in the Mexican Congress.

Petroleum Regulations

Regulations dated March 30, 1926 ("D. O." No. 31, April 8), being the Regulations of the Petroleum Law of December 26, 1925, which was summarized in 12 A. B. A. Jour. 265. Chapter I of these Regulations defines the administrative jurisdiction of the Secretariat of Industry, Commerce and Labor, and of the Petroleum Agencies dependent therefrom. II: Procedure in making application for concessions. III: Opposition presented against the granting of concessions. IV: Exploration or drilling concessions. V: Exploitation or operating concessions. VI: Concessions for pipe-lines of public use. VII: Concessions for pipe-lines of private use. VIII: Concessions for refineries. IX: General provisions. X: Administrative cancellation of concessions. XI: Recognition of rights and preferential rights.

Art. 5 of the Regulations provides that exploration and exploitation concessions shall be granted only on free land. Art. 6 recites that the following shall not be deemed free land: (I) Land covered by a concession granted pursuant to the Petroleum Law; (II) Land covered by a concession granted by the Executive pursuant to prior statutes (provided the concessionaire confirms the same prior to December 31, 1926); land covered by a denouncement made pursuant to the Decrees of July 31, August 8, and August 12, 1918 (provided the denunciant confirms his rights prior to March 31, 1927); land whereon exploitation was commenced prior to May 1, 1917, or relative to which a petroleum contract was executed prior to said date (provided the owner of the subsoil rights confirms the same prior to December 31, 1926); lands covered by a petroleum contract executed between May 1, 1917 and December 31, 1925 (provided the last assignee of such contract exercises, prior to December 31, 1926, his preferential right to a concession); (III) Land covered by an application for an exploration or exploitation concession and land covered by a cancelled concession, during a period of 30 days from the publication in the "Diario Oficial" of (a) definitive denial of the application, (b) lapse or termination of the concession, (c) judicial cancellation, or (d) surrender of concession; (IV) Land designated by the Secretariat of Industry as a national reserve zone. Art. 15 establishes a period of 45 days for the substantiation of the record. Art. 24: Ground for opposition to the grant of a concession consists in encroachment upon the lands defined in art. 6. Art. 25: Oppositions must be presented within the period of 45 days established by art. 15. Art. 33: Applicant and parties opposing the application must elect either the administrative or the judicial channels for the decision of their rights. Art. 147: Holders of concessions granted by virtue of prior laws and owners of rights in lands which were drilled prior to May 1, 1917, or were the subject-matter of petroleum contracts executed prior to said date must apply for confirmation thereof before December 31, 1926. Art. 157: The last assignee of a petroleum contract executed between May 1, 1917 and December 31, 1925, shall have a preferential right to a concession, provided he makes application therefor before December 31, 1926. Art. 158: Applications for the confirmation of denouncement rights under the Decrees of 1918 must be presented within the first three months of 1927.

Art. 159: If the holder of rights set forth in articles 12 and 14 of the Law (see art. 147 of the Regulations) or in art. 157 of these Regulations be a foreign company or a Mexican company having foreign members, within the purview of article 5 of the Law on Alienage of December 31, 1925 (12 A. B. A. Jour. 266) and article 10 of the Regulations thereof (supra), said rights shall be preserved by the company for the duration of the contract from which said rights derive, or, in a proper case, for the duration of the company according to the provisions of its articles of organization.

Income Tax

Decree of June 9, 1926 ("D. O." No. 43, June 22), amending article 20 (X) of the Income Tax Law of March 18, 1925. The amendment recites that the following are deemed to come within the purview of paragraph X of article 20 of the Law: foreign firms which receive income from the exhibition of moving pictures, owners of race-horses and of gambling devices, and, in general, persons who receive income from their property in the nature of price, rental, bonus, or other similar remuneration. The persons who pay said price, rental, or bonus are obligated to retain the tax and present their declarations pursuant to the Regulations.

Decree of June 9 ("D. O." No. 47, June 26), amending articles 12, 58, 82 (II) (IV), 90, and 92, and adding articles 40-bis and 57-bis to the Income tax Regulations of April 22, 1925. Art. 40-bis relates to declarations presented by agents, travelling salesmen, commission agents, and employees of foreign companies. Art. 57-bis specifies the mode of retaining and paying the tax pursuant to article 20 (X) of the Law.

Decree of August 25 ("D. O." No. 22, Sept. 28), adding article 45-bis to the Income Tax Law, obligating persons who acquire commercial, industrial, or agricultural businesses, or assets which are subject to the income tax, to make certain that the party with whom they contract is up to date in his payments of the tax, and making such persons jointly liable with the latter for unpaid taxes and penalties.

Decree of August 25 ("D. O." No. 22, Sept. 28), amending articles 1, 5, and 81 of the Income Tax Regulations.

Miscellaneous

Law on Migration, of March 9, 1926 ("D. O." No. 12, March 13, supplement), treats of immigration, the tax on immigrants, the immigration of colonists and groups of laborers, and of emigration. Art. 13 establishes the Register of Aliens and Nationals entering or leaving the country. Art. 14 requires all aliens and nationals entering or leaving the Republic to obtain an identification card. Art. 27 provides that the following persons do not come within the definition of immigrant: I. Diplomatic envoys and consular officials, members of official commissions from other countries, and their families and retinue; II. Aliens traveling through the country, provided their stay does not exceed six months; III. Tourists; IV. Aliens resident in the Republic, who have left the country within the period of six months prior to their return thereto; V. Persons who have entered the country unlawfully; VI. Aliens domiciled in the border towns of the United States, Guatemala, or British Honduras, who enter the neighboring Mexican towns by permission of the Migration Service. Art. 29 lists the classes of aliens who are prohibited from entering the country; such as those who, by reason of age, deformity, or infirmity, are unable to work and are likely to become public charges; males under age and females under 25 years, not accompanied by some adult member of their family, nor in charge of some resident of the Republic who assumes the responsibility of their maintenance and education; adult illiterates; fugitives from justice, convicts, and persons under prosecution for crimes, except political offenses; prostitutes and their associates; drug addicts and traffickers; anarchists; immigrant laborers who are unable to show a labor contract of at least one year duration or who have not sufficient funds to maintain themselves and families for three months; those who exercise a profession prohibited by the laws of the Republic; those who fail to pay the immigration tax; and such other persons as the Executive, in his discretion, may designate. Art. 33 provides that an alien who has resided in the Republic for more than five years and returns thereto without having been absent for longer than six months, shall not be required to comply with the immigration requirements. Art. 69 requires Mexicans and aliens leaving the country to state their intention of departing to the

immigration authorities at the place of departure, stating also their final destination in the country to which they are going and such other facts as the Regulations may prescribe, which data shall be set forth on the identification card. Transitory art. 2 abrogates the Immigration Law of December 22, 1908.

The Federal Sanitary Code, effective July 9, 1926 ("D. O." June 8-9) treats of the administration of the federal sanitary service at the seaports and frontier towns; of the maritime and aerial sanitary service; of quarantine stations; of migration; of prophylaxis; of the purity of foods and beverages; and of industrial hygiene. Art. 45 subjects all ships arriving at Mexican ports to sanitary visit and inspection before they may discharge passengers or cargo. Art. 70 subjects all aliens entering the Republic to the necessary sanitary examinations for determining whether or not they may be admitted; and provides for the sanitary examination of Mexicans for the purpose of taking precautionary measures in the event that they are suffering from communicable disease. Art. 72 lists the diseases which bar aliens from entering the Republic. Art. 77 requires all Mexicans and aliens entering the Republic to be vaccinated at the port of entry, unless they present a certificate, visaed by the Mexican consul at the place of their departure, proving that they have been vaccinated within five years. Art. 113 provides for compulsory vaccination, obligatory upon all the inhabitants of the country. Art. 114 requires infants to be vaccinated within four months of birth. Art. 131 imposes upon the Judges of the Civil Register and upon ministers of religion the obligation of requiring the presentation, by persons contracting matrimony, of proof that they do not suffer from communicable disease and that they have taken the Wassermann reaction test or an equivalent test. Transitory art. 2 abrogates the Sanitary Code of December 30, 1902, and all other laws and regulations in conflict with the present Code.

R. C. B.

Nicaragua

Legislation and Executive Decrees, 1926

Legislative Decree, April 12 (La Gaceta XXX, No. 82, April 13) Congress declares, in order to maintain public order which the judges of the Supreme Court have attempted to disturb, that they have ceased to be members of the Court, and by another decree of the same date, elects new members of the Supreme Court.

Executive Decree, May 5 (La Gaceta XXX, No. 102, May 6) orders collection of a forced loan, for $500,000, to meet the expenses of re-establishing public order.

Legislative Decree, June 9 (La Gaceta XXX, No. 137, June 17) creates the Ministry of Aviation.

Executive Decree, Nov. 1 (La Gaceta XXX, No. 247, Nov. 2) signed by all the members of the Cabinet, declares the Republic under martial law and suspends constitutional guarantees.

Presidential Decree, Nov. 1 (La Gaceta XXX, No. 247, Nov. 2) convokes a special session of Congress.

Executive Decree, Nov. 8 (La Gaceta XXX, No. 252, Nov. 8) calls a special election for Congressmen, November 21st.

Legislative Decree, December 1 (La Gaceta XXX, No. 275, Dec. 2) establishes a Claims Court or Commission, to be composed of one Conservative, one Liberal and the U. S. State Department's nominee on the High Commission, to adjudge, without appeal, requisitions and war damages in general, from October 25th to the re-establishment of peace.

P. J. E.

Panama

Legislation, 1926

Law 5, October 2 (Gaceta Oficial, XXIII, 4962, Oct. 6) creating a commission to prepare drafts of a Penal Code and Code of Criminal Procedure.

Law 6, October 13 (Gaceta Oficial XXIII, 4968, Oct. 16) enacting protective measures for Pan-American labor.

Law 8, October 18 (Gaceta Oficial XXIII, 4971, Oct. 20) creating an Industrial School for delinquent children.

Law 13, October 23 (Gaceta Oficial XXIII, 4977, Oct. 28) Immigration Law. Prohibits entry, principally of Chinese, Japanese, Syrians, Turks and other Oriental races and negroes from the West Indies and Guayanas, whose native tongue is not Spanish.

Law 14, October 22 (Gaceta Oficial XXIII, 4978, Oct. 29). To amend Article 53 of the Constitution; the Legislative Power to be vested in one chamber called the National Assembly, composed of one deputy for each electoral circuit of 15,000 inhabitants or fraction not less than half thereof. Deputies, and their alternates, are elected for terms of four years.

Law 19, October 30 (Gaceta Oficial XXIII, 4963, Nov. 3) enacting certain measures for public hygiene.

Law 22, November 1, (Gaceta Oficial XXIII, 4985, Nov. 10) amending Law 55 of 1924, regulating the legal profession.

Law 32, November 23 (Gaceta Oficial XXIII, 4994, Nov. 25)—tax on salaries and prizes in games.

Law 37, November 27 (Gaceta Oficial XXIII, 5003, Dec. 6) creating an Advisory Board to the Department of Foreign Affairs.

Law 54, December 11, amending Law 8 of 1924, as to acquisition and loss of Panama registry for merchant vessels.

Law 57, December 13 (Gaceta Oficial XXIII, 5016, Dec. 27) amending sundry provision of the Fiscal Code relating to the Public Registry.

Executive Orders and Resolutions, 1926

Presidential Decree No. 48, July 30 (Gaceta Oficial XXIII, 4918, Aug. 7) amending Decree 50 of Nov. 24, 1924, prohibiting importation of condensed milk not up to specified standards.

Presidential Decree No. 36, August 4 (Gaceta Oficial XXIII, 4932, Aug. 27) raising the consulate at San Francisco to a Consulate General.

Presidential Resolution, September 6 (Gaceta Oficial XXIII, 4943, Sept. 10) declaring mineral waters free from municipal tax.

P. J. E.

Peru

Legislation, 1926

Law 5394, February 26 (El Peruano I, 94, April 29), reducing the tax on concessions of coal lands to 4 soles annually for claims of 40,000 square meters.

Law 5431, March 5 (El Peruano I, 124, June 7), import duty on bottles.

Law 5461, August 14 (El Peruano II, 40, August 19), authorizing the Executive to contract a loan up to $30,000,000.

(Note: Pursuant to this authorization, the External Sinking Fund 7½% Gold loan of 1926 was offered in New York in the amount of $16,000,000 in August, at par by a syndicate headed by Blyth, Witter & Co. and White, Weld & Co.)

Law 5574, December 11, 1926, Income Tax Law. A translation was issued Feb. 18, 1927, Special Circular No. 143, Division of Commercial Laws, U. S. Dept. of Commerce. Non-residents in receipt of income from property on business in Peru are subject to the tax, and residents are taxable on foreign as well as Peruvian income (Art. 8). The tax on invested capital is in general 7%; on salaries and personal revenues in excess of Lp. 1000 (approximately at present rate, $4,000), 5%. Corporations are subject to a tax of 5% on the excess over 10% net profit. Profits in the mining industry are levied by specific taxes on weight and value of product, miners being entitled to reimbursement up to 10% of net profits. Surtaxes range from 2 to 6%.

P. J. E.

Salvador

Legislation, 1926

Legislative Decree, May 17 (Diario oficial, Vol. 100, No. 113, May 22), authorizes the Executive to issue remaining $2,000,000 of Series "C" bonds.

Legislative Resolution, May 26 (D. O., Vol. 100, No. 119, May 28) prohibits remarriage of any person twice divorced, except when the prior divorce was granted on mutual consent or in favor of an innocent party.

Legislative Resolution, May 21 (D. O., Vol. 100, No. 120, May 31) provides that at least 80% of the employees of foreign and domestic companies and enterprises must be Salvadoreans, under penalty of a fine of 2% of their profits. Exception is made as to day laborers for harvesting crops.

Legislative Decree, May 29 (D. O., Vol. 100, No. 130, June 12) provides an eight-hour and seven-hour day for male and female commercial employees respectively; one day's rest in seven; and a two weeks' annual vacation on pay. The law also provides that 80% of the employees in any commercial business must be Salvadoreans, and provides for obligatory savings of from 2 to 10% of the salary, varying according to the wage scale.

Legislative Decree, May 27 (D. O., Vol. 100, No. 131, June 14) approves the Pan-American Sanitary Convention and Final Act, signed at Havana, November, 1924.

Legislative Decree, May 2 (D. O., Vol. 100, No. 140, June 25), Organic Law of the Bureau of National Statistics.

Legislative Decree, May 31 (D. O., Vol. 100, No. 141, June 26) creating a permanent fund for road construction and maintenance and development of the uncultivated regions of the country.

Budget Law (D. O., Vol. 100, No. 147, June 28) for the Fiscal Year 1926-1927. Estimated revenues, C. 20,000,000; Expenses, C. 19,991,454.

Legislative Decree, July 2 (D. O., Vol. 101, No. 145, July 2) approves the International Radio Convention of London, July 5, 1912.

Legislative Decree, June 30 (D. O., Vol. 101, No. 147, July 5) authorizes the foundation of a bank of issue under the name of *Banco de Empleados Publicos* (Civil Servants' Bank) with a capital of one million colones.

Postal Convention with France of August 25, 1924 (D. O., Vol. 101, No. 147, July 5).

Radiotelegraph Convention with Mexico on May 11, 1926 (D. O., Vol. 101, No. 149, July 7).

Legislative Decree, May 25 (D. O., Vol. 101, No. 150, July 8) approves the Universal Postal Convention of Stockholm, August 28, 1924.

Legislative Decree, May 30 (D. O., Vol. 101, No. 152, July 10) makes the license fee for trade-marks 25 colones for 10 years, instead of 20 years as formerly.

Legislative Decree, May 27 (D. O., Vol. 101, No. 152, July 10) appoints a Commission to draft amendments to the Constitution and Organic Codified and Administrative Laws.

Legislative Decree, May 24 (D. O., Vol. 101, No. 162, July 22) approves the Convention, Protocol and Final Act of the Second Opium Congress, Geneva, February 19, 1925.

Legislative Decree, March 5 (D. O., Vol. 101, No. 163, July 23) approves the resolutions adopted at the International Parliamentary Commercial Conference, Rome, April 17-20, 1925.

Executive Decrees

June 9 (D. O., Vol. 100, No. 128, June 10) provides for importation, free of duties and port charges and consular fees, of corn and beans to December 31, 1927.

September 5 (D. O., Vol. 101, No. 213; Sept. 28) prohibits immigration of those suffering from certain diseases; requires certificates of good conduct and a cash deposit of $100, to be returned on emigration within six months.

P. J. E.

Venezuela

Legislation, 1926

June 21 (Gaceta Oficial LIV, Special No., June 22) Organic Law of the National Treasury (Hacienda).

May 20 (G. O., LIV, No. 15928, June 26) Organic Law of the Ministries, or Government Departments, and of the office of the Secretary General to the President; repealing law of July 31, 1922.

May 22 (G. O., LIV, No. 15947, July 20) Pearl Fisheries law. Licenses are granted by the Executive, upon resolution of the Cabinet, at rates to be fixed periodically, depending upon the wealth of the beds, number engaged in the business, and other attendant circumstances.

June 28 (G. O., LIV, No. 15949, July 22) exempts from buoyage fees, at Maracaibo, national or foreign warships, Venezuelan government vessels, and vessels engaged in the coastwise trade.

July 15 (G. O., LIV, No. 15954, July 29) Banking Law. Exchange, loan and discount operations may be engaged in without other formality than that required by the Commercial Code for mercantile establishments in general. Commercial banks require a license from the Federal Executive. The right of issue of bank notes is an exclusive prerogative of the nation, which may grant the privilege to national banks under the conditions established by law. The Federal Executive is also authorized to declare, whenever he deems advisable, that for a specified term no new authorization to issue bank notes shall be granted.

July 3 (G. O., LIV, Special No., July 29) Customs Law.

(Gaceta Oficial, LV, No. 16070, December 22) prints the Currency Law of June 15, 1918.

Executive Decrees, Etc.

Presidential Resolution, April 3 (G. O., LIV, No. 15157, April 3) orders the construction on the west coast of Paraguana peninsula, of a port especially adapted for petroleum shipments, with wharfage capacity for at least three ocean-going steamers loading simultaneously, customs houses and other public offices, lighthouses, etc.

Presidential Decree, July 24 (G. O., LIV, No. 15951) Venezuela contributes to the Bolivar University at Panama.

Presidential Decree, August 14 (G. O., LIV, No. 15970, August 17) Parcels post regulations.

Bibliography

Ministerio de Relaciones Exteriores: Tratados y acuerdos internacionales de Venezuela. Vol. II, 1900-1920, Caracas, 1925.

P. J. E.

EUROPEAN LEGISLATION AND DECISIONS

Spain

Bibliography

Bemmelin, P. V. *Nociones fundamentales del Derecho civil. (Segunda edición).* This is an excellent account of the general principles upon which the Civil Law is based, as applicable to the jurisprudence of Spain. As the administration of justice in the Peninsula is, to a greater or less extent, indebted to the vast compilation of Justinian, it is peculiarly appropriate that another attempt should be made to set forth in general terms, all maxims of Roman law, which today exert such an influence upon legal proceedings before the tribunals of the majority of the nations of the civilized world. To those who are familiar with the Civil Law, its supreme importance as the original source of all modern jurisprudence, becomes more and more evident when it is compared with subsequent systems, even with the English Common Law, generally supposed to be practically independent of Roman influence, although the pages of Bracton, Fleta, Plowden, and other early authorities abound in paragraphs and rules that have been appropriated unaltered from the Digest and the Code, without indication of their origin; until the student wonders what the dispensation of justice would have been had these invaluable records of legal wisdom and experience met the fate of so much of the literature of classic times.

The enormous and ever increasing mass of worthless and perplexing legislation, largely due to the desire of those responsible for it to render themselves conspicuous, or to subserve some selfish, often some mercenary purpose, and whose ambiguous phraseology and conflicting provisions are the despair of the intelligent lawyer, appears contemptible, when compared with the clear cut and readily applicable dicta and judicious enactments of Roman jurisprudence. It is this multiplicity of statutes, as well as the flagrant infringement of human rights, which, in so many instances, their enforcement demands, that has contributed, more than anything else, to the open defiance of law, unhappily so prevalent in our day. (Editorial Reus, Cañizares 3, dpdo. Madrid, 8vo. Price 8 *pesetas.*)

Alvaro Navarro de Valencia, *Código penal y enjuiciamiento criminal.* Here we have another of the innumerable editions of the Penal Code and criminal practice which are being constantly issued by the Spanish press. The author, who is the Inspector of Prisons, evidently possesses much practical knowledge of his subject, which he treats with considerable ability. The recent thorough revision of the Penal Code, in which special attention was given to the modification of penalties.—that in the modern general indulgence to law-breakers were deemed too harsh—has rendered new commentaries on this branch of jurisprudence necessary. This work is the very latest one on the subject and contains the edicts of the Military Directorate, otherwise known as the Dictatorship, which has

wrought such a beneficial change in the administration of public affairs in the Peninsula. (Editorial Reus, Cañizares 3 dpdo. Madrid, 8vo. Price 18 *pesetas.*)

Moya Sánchez E. *Manual del derecho de pesca.* With its extensive sea line, the fishing industry in Spain is necessarily of paramount importance. This work which, notwithstanding its modest title, is exhaustive in scope, contains not only all the statutory provisions on the right of fishery, but also the ancient provincial customs and fueros, upon which subsequent legislation has been founded. It includes all the rules applicable to different bodies of water, from the smallest stream and lake to the ocean; as well as the laws regulating pisciculture, which has attained a considerable development in the Peninsula within recent years. The book is enriched with many useful notes, and has an appendix containing much valuable information on the subject. (Editorial Reus, Cañizares 3 dpdo, 8vo. Price 3.50 *pesetas.*)

Colin A. y. Capitani H. *Curso elemental de Derecho Civil.* This constitutes Vol. III of this great treatise on the civil law of Spain and has for its subject the general principles governing legal obligations of every description. Copious notes have been contributed by Señor Demófilo de Buen of the University of Seville, a high authority on this branch of the law.

The method employed in the arrangement and exposition of the various portions of the work is unusually clear and systematic. The Spanish student of jurisprudence is fortunate in having such a wealth of useful knowledge on every branch of the science at his disposal, as is afforded by the innumerable text-books and commentaries on civil and criminal theory and practice. There is probably no other country whose legal literature is more copious, or better adapted to the instruction of those who aspire to become learned in the law, and proficient in the management of cases before every kind of judicial tribunal. (Editorial Reus, Cañizares 3 dpdo. Madrid, 4to. Price 16 *pesetas.*)

Bonnier E. *Tratado teorico y practico de las pruebas en Derecho civil y en Derecho penal.* A work on the law of evidence, in two volumes, thorough and comprehensive in its character. The peculiar rules existing in many European countries, which, among other anomalous modes of procedure, admit the worst kind of hearsay, even in the absence of the defendant, present a singular contrast to the Anglo-Saxon method of taking and analyzing testimony. The book is valuable for purposes of comparison, as well as an aid to those who desire to extend their acquaintance with "Old Father Antic the Law." (Editorial Reus, Cañizares 3, dpdo. Madrid 8vo. Price 14 *pesetas.*)

S. P. S.

Switzerland

Internal and International Legislation in 1926

The legislative output of the Swiss Federation was a very moderate one during the past year though the law making machinery did not remain idle. It must again be pointed out that the process of law making is very slow in Switzerland and that it requires years until laws of general importance are passed. Of all laws mentioned in the last report only the Automobile Act regulating licenses and motor traffic has become law. And yet, this act is so strongly opposed that the "referendum" was taken against it and the Swiss people will have to adopt or reject it on May 15, 1927. If it is approved of by the Swiss voters the most important topic thereof, the liability of the automobile owner and the driver, will be discussed in the next report or in a special article.

The question whether or not the federal constitution should be amended to the effect that the corn trade should be monopolized in the hands of the federal government was one which stirred up public opinion in 1926. Such a monopoly tending to improve the conditions of farming was and is still in existence in Switzerland, basing its effect on the extraordinary powers conferred upon the Swiss Federal Council (executive) in 1914. But last fall the issue came up whether or not this corn monopoly, as it was called, should be perpetuated by laying it down in the constitution. All members of the Federal Council and all political parties, first of all farmers and socialists, supported the amendment of the constitution. Only part of the Liberals, chiefly those of the more industrialized Cantons, like Basle and Zurich, openly opposed it.

As in the United States the economic condition of the farmers is not an enviable one. This explains why only few people dared to openly oppose the measure. Nevertheless the amendment did not become law; for, it was defeated by the popular vote of November 2, 1926. While only few people contest the necessity that something should be done for the farmers, the majority disliked that the proposed measure consisted of a federal monopoly. This decision of the Swiss people can be interpreted as an important step to do away with all artificial obstacles fettering free trade and intercourse between the nations, which obstacles are to a considerable extent responsible for the unsatisfactory economic condition of Europe.

On April 15, 1926 Switzerland subjected herself for another ten years to the obligatory jurisdiction of the Permanent International Court. By virtue of Article 36, Par. 2 this adherence is only valid towards and can only be invoked by countries which have themselves consented to this obligatory extension. This extension for the next ten years was given and has met with no objection whatsoever, a good sign, how deeply the idea of compulsory arbitration is rooting in Switzerland. All the past year through this idea was pursued and manifested by Switzerland's entering into new conciliation and arbitration treaties with other countries. In 1924 such treaties were entered into with Austria, Brazil, Denmark, France, Hungary and Sweden; in 1925 with the Argentine Republic, Belgium, Italy, Japan, Poland and Turkey and in the past year with Norway and Rumania and Spain.

Court Decisions

Stipulations in Restraint of Trade—Contracts—Tort—A case regarding stipulations in restraint of trade which recently came up before the Federal Court might be of interest to the legal profession of this country. The plaintiffs, Swiss cigarette manufacturers, entered among themselves into an agreement, whereby they promised under penalty to sell their products to the dealers at a uniform fixed price and to pay them on each sale a certain commission fixed in advance by the plaintiffs. At the same time they entered into an agreement with various syndicates of cigarette dealers to the effect that the respective dealers recognized the validity of the agreement between the plaintiffs and promised not to dispose of the cigarettes below the retail price fixed by the plaintiffs. The dealers in question further consented not to resell the cigarettes to retail dealers who are known to sell merchandise to the public below the price so fixed by the plaintiffs' trust and who are not parties to the said agreement between the plaintiffs and the dealers. The defendants who had never entered into any agreement with either the plaintiffs or the aforesaid dealers, part whereof became co-plaintiffs in this action, managed to get cigarettes made by the plaintiffs in spite of the fact that they did not sell them to the public at the price fixed by the manufacturers (plaintiffs). As a matter of fact the dealers got the cigarettes from wholesale dealers who had entered into the said agreement with the plaintiffs. But as the plaintiffs were unable to find out those dealers who had broken the agreement (because they sold to dealers who are known to resell at cheap prices) they started suit against the defendants who, as aforesaid, had never bound themselves either towards the plaintiffs or their dealers and co-plaintiffs to sell the cigarettes at the price fixed by the manufacturers' trust. The prayer was to enjoin the defendants from continuing to sell the cigarettes at the old cheap prices. The contention of the plaintiffs was that the defendants induced the dealers to break their contracts with the plaintiffs and that it was tort for the defendants to take advantage of such a breach of contract induced by them. The defendants maintained that there was never any contractual privity between them and the plaintiffs and that a dealer cannot justly be prevented from selling his merchandise at whatever price he likes, unless he have by contract bound himself to the contrary which is not the case here. It is remarkable that the defendants did not even try to question the legality of the agreements between the plaintiffs and the dealers. For, there are no specific provisions in Swiss law against monopolies and trusts in restraint of trade nor is there any general civil law principle to such an effect. It is true that Art. 20, Par. 2 of the Swiss Code of Obligations provides that contracts are void, if they are against public policy, good morals or the rights of personality. But as this article is construed by the Swiss courts it would hardly apply in this case. The Commercial Court of Zurich decided in favor of the plaintiffs. The opinion stated that it was unlawful for the defendants to take advantage of the breach of contract between the plaintiffs and the dealers, that this taking advantage was tort and an act of unfair competition, violating Art. 28 of the Swiss Civil Code*. But the Federal Court unanimously reversed this decision finding that in the absence of any contract the defendants could only be made responsible in the case of tort and holding that the defendants had done no

*Where any one is being injured in his person or reputation by another's unlawful act, he can apply to the judge for an injunction to restrain the continuation of that act.

wrong by benefiting under the breach of contract committed between third parties. The only remedy for the plaintiffs would be an action for damages against those dealers who had broken their agreements with the plaintiffs (Schweizer & Horn v. Araks-Tschamkarten & Co. et al; Decision of the Federal Court of Nov. 8, 1926).

Application of Bolshevik Law in Switzerland—In Schinz v. Baechli (Decision of the Federal Court of June 4, 1926) the question came again up before the Federal Court whether or not Bolshevik law is to be applied in Switzerland. In Hausner v. Banque Internationale de Petrograd (Federal Court, Decision of December 10, 1924) the Federal Court held that in Switzerland a pre-revolutionary Russian bank could after the revolution not sue its debtors, because such a bank had lost its legal existence when nationalized by the Soviets. This decision thus recognized in a certain measure the effect of revolutionary Russian legislation, especially of the decrees of December 27, 1917 and February 8, 1918. Apparently, the Federal Court did not mean to recognize the validity of the Bolshevik legislation as a whole, but simply felt constrained to state the fact that the respective bank had disappeared in Russia—a fact which nobody can contest—and that consistently its Swiss branch had also disappeared. For, the branch was not incorporated in Switzerland and as a foreign corporation its legal existence depended on the validity of the corporate existence of the head-office abroad. In Schinz v. Baechli the plaintiff had in 1919 loaned to the defendant Rubl. 55,000—to be paid back by the defendant at his option in so-called Duma Rubles or in Swedish Crowns. Both parties then resided in Petrograd. After the return of both parties to Switzerland the plaintiff sued to recover the said loan. The defendant alleged that the Bolshevik legislation in force at that time prohibited loans in excess of Rubl. 10,000. This defense was held bad by the Court of Appeals of the Canton of Zurich, the court saying that Bolshevik legislation is not applicable in Switzerland because the Russian government is not recognized by the Swiss government. This decision was upheld by the Federal Court. But the court was relieved from the task to harmonize this decision with the aforesaid case of Hausner v. Banque Internationale de Petrograd with which it is in conflict, because the matter was brought before the Federal Court in the form of a special appeal proceeding in which the Federal Court has only to decide whether or not constitutional provisions were violated by the cantonal judgment. The appeal was based on the violation of Art. 4 of the federal constitution (equality before the law and denial of justice). The Federal Court took the right position that the refusal of the cantonal tribunal to apply Bolshevik law was not a denial of justice in the constitutional sense. But it is of interest that the opinion stated that upon principle the application of Bolshevik law does not depend on the question whether or not Switzerland recognizes the Bolshevik government. This seems to indicate that in other cases, where an ordinary appeal would lie, the Federal Court might again follow the case of Hausner v. Banque Internationale de Petrograd and recognize the dissolution of pre-revolutionary Russian corporations.

Bibliography

I. On Private Law

Cuénet Roger, De la réduction du capital social dans les sociétés anonymes en droit suisse, français et allemand, Laus.

Faessler R., La Fusion des sociétés anonymes en droit suisse et étranger, Lausanne.

Frizsche Hans, Die örtliche Rechtsanwendung auf dem Gebiete des Obligationenrechts in "Verhandlungen des schweiz. Juristentages," Basel.

Petitpierre G., De la responsabilité civile des administrateurs dans les sociétés anonymes en droit suisse, anglais et italien, Lausanne.

Sauser-Hall Georges, Le droit applicable aux obligations en droit privé, Basel, in "Verhandlungen des schweiz. Juristentages."

II. On International Law

Baenzinger, die Repressalien im Völkerrecht, Freiburg.

Capitaine G., La question de l'unification internationale des lois régissant le chèque, in "Zeitschrift des Berner Juristenvereins, 61, 201 et seq.

Gibson Hugh (American Ambassador in Bern), Switzerland's position in Europe, in "Foreign Affairs," 1925, 72 et seq.

Homberger, Die Haager Privatrechtskonventionen seit ihrem Abschluss, in "Zeitschrift des Berner Juristenvereins," 61, 249 et seq.

Müller Albert, Das Niederlassungsrecht der Ausländer in der Schweiz.

Naccary, La nationalité de la femme mariée dans les principaux pays, Genève.

Secrétan Roger, Le divorce et la séparation de corps dans les relations franco-suisses, Lausanne.

Waldkirch, Völkerrecht (A Swiss treatise on international law).

III. Miscellaneous

Blau H., Die Bestrebungen des Völkerbundes zur Bekämpfung der Doppelbesteuerung auf internationalem Gebiete in "Vierteljahrsschrift für schweizerisches Abgaberecht, 6, 1 et seq.

Blumenstein & Weyermann, Zur internationalen Abgrenzung der Vermögenshoheit bei industriellen Unternehmungen in "Vierteljahrsschrift für schweizerisches Abgaberecht, 6, 97 ff.

Bueler Heinrich, Die Entwicklung & Geltendmachung des schweizerischen Volksinitiativerechts, Zürich. (A valuable study on the right of "initiative").

Hafter, Schweizerisches Strafrecht, vol. I. (A clear and learned textbook on the guiding principles of Swiss penal law).

Huber Eugen, Recht und Rechtsverwirklichung, 2nd unchanged ed., Basel (one of the last contributions of the late famous Swiss lawyer to legal philosophy).

Overbeck, Schuldbetreibung & Konkurs. A concise study on debt collecting and bankruptcy and the proceedings relating thereto).

Petitpierre M., La reconnaissance et l'exécution des jugements civils étrangers en Suisse, Paris.

Schindler, Die Verfassungsgerichtsbarkeit in den U. S. in "Zeitschrift für schweiz. Recht, 44, 19 et seq."

Schneider Salome, Steuersystem & Steuerpolitik in der Schweiz, Berlin.

Silbernagel, Vollstreckung von Alimenturteilen im Ausland in "Schweizerische Juristen Zeitung," 22, 39 et seq.

Widmer, Die bedingte Verurteilung im Kanton Zürich, 1925.

Jucker Chas., Zur Vollstreckung amerikanischer Urteile in "Schweizerische Juristen Zeitung" 23, 61 et seq.

C. O. J.

Articles on Foreign Law Published in Recent Law Journals

Albania

Comments on the new Albanian Constitution. Emerson B. Christie. 20 Am. Pol. Sci. Rev. 120-123.

Alsace-Lorraine

The Legal System of Alsace-Lorraine. M. Leon Julliot de la Morandiere. 9 J. Comp Leg. 3d Ser. Pt. 1, 100-110.

Argentina

Legislation, 1924 and bibliography. P. J. E. 12 A. B. A. Jour. 251.

Brazil

Legislation. J. W. 12 Am. Bar. A. Jour. 251.

James (Herman G.): Constitutional System of Brazil. 1923. Review by C. G. Haines. 2 Texas L. Rev. 537-9.

British Empire

See the reviews of legislation, 1924, in 8 J. Soc. Comp. Leg., 3d Ser., Pt. 2, 1-188; Pt. 3, 189-233.

Ceylon

Jayawardene, Don Adreas St. Valentina: The Law of Partition in Ceylon. Colombo: The Ceylon Daily News. Review by Anton Bertram. 8 Jour. Soc. Comp. Leg. 3d Ser. Pt. 1, 154-156.

Chile

Legislation, 1924, 1925. P. J. E. 12 A. B. A. Jour. 252-255.

China

The Constitution of China. W. A. Shumaker. 30 Law Notes 84—'5.

Extraterritoriality in China. Harold Scott Quigley. 20 Am. J. Internat. L. 46-68.

American Extraterritoriality in China. Charles Loring. 10 Minn. L. Rev. 407-416.

Growth and Scope of Extraterritoriality in China. G. W. Keeton, Univ. of Hong Kong. 42 L. Q. Rev. 481-501. (To be continued).

The International Mixed Court of Shanghai. An address by John F. D. Meighan. So. Dak. Bar A. 1925, 143.

The Chinese Customs Tariff Conference, Oct. 26, 1925. "Comment." George A. Finch. 20 Am. J. Internat. L. 124-127.

The New Chines Codes. George W. Keeton. 8 J. Soc. Comp. Leg. 3d Ser., Pt. 1, 225-238.

Notice of initial number of a Law Journal to be published by the Hong Kong University Law Society. 42 L. Q. Rev. 293.

China Today: Tariff, Extraterritoriality and Other Problems. Recommendations as to Extraterritoriality—Chinese Grievances. Silas H. Strawn. 12 Am. Bar A. J. 827.

A Short Sketch of Chinese Library Development. John C. B. Kwei. 51 Library Jour. 1111-1114.

Colombia

Legislation, 1924, 1925. P. J. E. 12 A. B. A. Jour. 255-256.

Adoption practically in toto July 19, 1923, of the American Uniform Negotiable Instruments Law. Mentioned in 20 Am. J. Int. L., 129.

Costa Rica

Recent legislation; recent publications. W. J. 12 A. B. A. Jour. 256-257.

Dominican Republic

Convention of Dec. 27, 1924, for the Assistance of the U. S. in the collection and application of the Customs Revenues of the Dominican Republic. 20 Am. J. Internat. L. No. 1.

Ecuador

Legislation, Jurisprudence. P. J. E. 12 A. B. A. Jour. 257-8.

Egypt

The Mixed Courts of Egypt. Jasper Y. Brinton. 20 Am. J. Internat. L. 670-688.

Conflicts of Jurisdiction in Egypt. "Note" by F. M. G. 8 J. Soc. Comp. Leg. 3d Ser., Pt. 1, 296-298.

Syrians and Palestinians in Egypt. "Note." F. M. Goadby. 8 Comp. Leg., 3d ser., Pt. 1, 144-5.

France

Amending the Constitution of France. Henry Campbell Black. 10 Constl. Rev. 236-241.

Review of Legislation, 1924. Oliver E. Bodington. 8 J. Soc. Comp. Leg., 3d ser., Pt. 3, 233-236.

Court Decisions. E. A. Legislation. See Journal du droit International, Dec. 1925, pp. 1229-1240. Bibliography, see Journal du droit International, pp. 1246-1300. 12 A. B. A. Jour. 266-268. E. A.

The Arbitration Clause in the French Act of 31st Dec., 1925. Noticed by P. Pellerin. 70 Solic. J. 443.

French Fiscal Legislation Regarding the Cinema. M. Robert Kiefe, Paris. 8 J. Soc. Comp. Leg. 3d ser., Pt. 1, 255-259.

The French Judicial System. Sir Thomas Barclay. 38 Jurid. Rev. 39-54.

French Law and the French Judicial System. Charles F. Beach, of Paris. 30 Law Notes 169-173.

Le Barreau de Paris. Address of M. Fourcade, Batonnier of the Paris Bar, before the American Bar Association in 1925. 4 Canadian Bar Review 7-15.

Legal Education in France. J. P. Bullington. 4 Tex. L. Rev. 461.

Engagement to Marry: Woman's Right to Change Her Mind. A paragraph in 70 Solic. J. 874.

A consideration of the proposed Family Voting in France. (In political elections.) Robert K. Gooch. 20 Am. Pol. Sci. Rev. 299-312.

Germany

The main features of the Constitution of the German Reich of 1919 Compared With the Constitution of 1871. Dr. B. H. Jaup, Berlin. 8 J. Soc. Comp. Leg., 3d ser. Pt. 1, 239-245.

The Law of Moving Pictures in Germany. Dr. Fritz Smoschewer. Berlin. 8 J. Soc. Comp. Leg. 3d Ser., Pt. 1, 250-254.

Judicial Review of Legislative Acts in Germany. F. F. Blachly. 21 Am. Pol. Sci. Rev. 113-119.

The Administration of Justice in the Courts of Germany. Dr. Karl von Lewinski. Wisconsin Bar A. 1924.

Revaluation of German Mortgages. A brief synopsis. Carl Wallis von Helmolt. 12 A. B. A. Jour. 122.

Prussian State Library. By Hugo Kruss, Director General. 51 Lib. J. 1005-1010.

Guatemala

Legislation, Conventions, Recent Publications. 12 A. B. A. Jour. 258-9.

Honduras

Conventions, 1925. W. J. 12 A. B. A. 259.

Hungary

Reconstruction of the Hungarian Parliament. Malbone W. Graham, Jr. 20 Am. Pol. Sci. Rev. 384-392.

Iraq

The bar association at Bagdad. See paragraph in 12 A. B. A. Jour. 215.

Italy

Legislation of 1924. J. P. B. 12 A. B. A. 272-274.

Review of Legislation, 1924. Vol. 8, J. Soc. Comp. Leg. 3d ser., Pt. 3, 236-7.

Japan

Legislation, 1924, 1925. J. G. K. 12 A. B. A. Jour. 341-'2.

The New Japanese Electoral Law of May 5, 1925. Harold S. Quigley. 20 Am. Pol. Sci. Rev. 392-395.

The Taiho Code, 702 A. D., the First Code of Japan. Vivian M. Carkeek. 1 Wash. L. Rev. 182-194.

The Anglo-American Law Institute and Sei-Kiu-Do Law Library. 12 A. B. A. Jour. 625; 638-641.

Foreign Marriages in Japan. T. Baty. 70 Solic. J. 869-870; 885-886; 899-900.

Latin America

Latin American Legislation, with Brazilian. J. W. 12 A. B. A. Jour. 251-266.

Liechtenstein

The New Civil Law of the Principality of Liechtenstein. By Dr. Marcus Wyler, Avocat, St. Gall. 8 Jour. Comp. Leg. 3d ser. Pt. 1, 197-214.

Mexico

Legislation, J. W. 12 A. B. A. Jour. 264-266.

Mexican Land Laws. Editorial Comment by Philip Marshall Brown. 20 Am. J. Internat. L. 519-526.

Decisions of the Claims Commission, United States and Mexico. Editorial Comment by Edwin M. Borchard. 20 Am. J. Internat. L. 536-542.

Divorce in the State of Sonora. A Statement. 12 A. B. A. Jour. 379.

Nicaragua

Laws, Decrees, Recent Publications. W. S. P. 12 A. B. A. Jour. 259.

Non-recognition of the Chamorro Government. Editorial Comment by L. H. Woolsey. 20 Am. J. Internat. L. 543-549.

Palestine

The Legislation of Palestine, 1918-1925. Norman Bentwich. 8. Jour. Soc. Comp. Leg. 3d Ser., Pt. 1, 9-20.

Palestine and the Judicial Committee—Compensation on appropriation of water for Jerusalem—The right of appeal to His Majesty in Council. 161 Law T. (London) 208-209.

Jewish Law in Palestine. Epitome of a paper read by Norman Bentwich, Attorney-General of Palestine, on the Application of Jewish Law in Palestine. 162 Law Times 58; 9 J. Comp. Leg., 3d ser., Pt. 1, 59-67.

Panama

Laws, Conventions, Bibliography. W. S. P. 12 A. B. A. Jour. 260.

Panama Canal Zone

Sovereignty of—L. H. Woolsey. 20 Am. J. Internat. L. 117-124.

Peru

Legislation. P. J. E. 12 A. B. A. Jour. 261.

Poland

International Unification of Commercial Laws—New Legislation in Poland. "Comment," Arthur K. Kuhn. 20 Am. J. of Internat. L. 127-129.

Russia

The Judicial System of Soviet Russia. Will Shafroth. 12 Am. Bar A. Jour. 793-797, 808.

The Legal Position of Foreigners in Soviet Russia. Dr. Leo Zaitzeff of the University of Berlin. 24 Mich. L. Rev. 441-460.

Trade Marks. New laws of Feb. 12, 1926. 25 Pat. & Tr. Mark Rev. 9-12.

The Nationalization of Joint Stock Banking Corporations in Soviet Russia and Its Bearing on Their Legal Status Abroad. Paul Wohl, of Berlin, Germany. 75 U. Pa. L. Rev. 385-410. Translated by Edwin M. Borchard. From Ostrecht for Nov. 1925. (To be continued).

Salvador

Laws, Decrees, Conventions. W. S. P. 12 A. B. A. Jour. 261-262.

Scandinavia

Legislation, etc. A. T. 12 A. B. A. 268-272.

Spain

Bibliography. S. P. S. 12 A. B. A. Jour. 339-340.

Switzerland

Legislation, 1925. Bibliography. A brief tribute in memory of Gordon E. Sherman. C. O. J. 12 A. B. A. Jour. 340-341.

Turkey

Law Reform in Turkey. Manley O. Hudson. 13 Am. B. A. Jour. 5.

Reform in the Turkish Judicial System. Crawford Morrison Bishop. 12 Am. Bar. A. J. 248-249.

The New Regime of Law in the Turkish Republic. John H. Wigmore. With the Speech of His Excellency Mustapha Kemal Pasha, President of the Turkish Republic at the Inauguration of the Angora Law School, Nov. 5, 1925. 21 Ill. L. Rev. 83.

Venezuela

Constitution, Legislation, Bibliography. P. J. E. 12 A. B. A. Jour. 262-264.

Miscellaneous

Aviation—Agreement between Norway and Sweden relating to Air Navigation. Signed May 26, 1923. Ratifications, July 30, 1923. Vol. 20 Am. J. Internat. L. Supp. 123.

Civil Procedure—Study in Comparative Civil Procedure. Pierre Le Paulle, of the bar of Paris. (Based essentially upon French procedure.) 12 Cornell L. Q. 24-48.

Comparative Law—See also Pleading.

Reciprocal Influences of the French and English Laws. Hon. Thibaudet Rinfret. Address before the Canadian Bar Association, 1925. 4 Canad. Bar. Rev. 69-85; Canadian Bar A. Proceedings, 1925.

French and English Civil Procedure: A Parallel. A. C. Wright. 42 L. Quar. Rev. 327-349. (To be continued).

Some Comparative Aspects of Civil Pleading Under Anglo-American and Continental Systems. Robert Wyness Millar. 12 A. B. A. Jour. 401.

Divorce—Validity of foreign Divorces in English Courts. 70 Solic. J. 1126-7, 1150-51.

Divorce and Married Women's Property Rights:

Light Acquired by Study of Status of Woman in the Land of "Simultaneous" as opposed to "Continuous" Polygamy—Muhammed as a Woman's Rights Champion. Hon. Pierre Crabites, of the Mixed Tribunal at Cairo. 12 A. B. A. Jour. 603.

Foreign corporations in international public law. E. H. Feilchenfeld. 8 Jour. Soc. Comp. Leg. (London) 3d ser., Pt. 1, 81-106.

Government—Legal Status of Government Ships Employed in Commerce. J. W. Garner. 20 Am. J. Internat. L. 759.

Holland (Sir Thomas Erskine):

I. By Prof. A. Pearce Higgins; II. By Prof. J. L. Brierly. 42 L. Q. Rev. 471-477.

Obituary notice. 70 Solic. J. 677; 4 Canad. Bar Rev. 399.

International Convention for Protection of Industrial Property to be held at the Hague commencing October 8, 1925. Vol. 11, Am. Bar A. Jour., 524.

International Law—

Chronicle, Judicial Decisions, Comments, Treaties and Official Documents. See American Journal of International Law.

Treaty between the United States and Cuba for the adjustment of title to the Isle of Pines. Signed at Washington, March 2, 1904; ratifications exchanged March 3, 1925. Vol. 19, Am. J. Int. L. Supp. 95-8, J1. 1925.

Mandate; some recent cases on the status of mandated areas reviewed. 20 Am. J. Internat. L. 768-772.

The International Status of Berar. S. G. Vesey Fitz-Gerald. 42 L. Q. Rev. 514-520.

Russo-German Treaty. Editorial by J. W. Garner. 20 Am. J. Internat. L. 530-533.

Judicial decisions involving questions of international law (Arbitration between Chile and Peru) 19 Am. J. Int. Law, 393-432.

Jitta, Dr. Joseph. Obituary Notice. 12 A. B. A. Jour. 659.

Krabbe, H. The Juristic Theories of Krabbe. W. W. Willoughby. 20 Am. Pol. Sci. Rev. 509-523.

Labor—

See the annual volumes of labor laws, published by the International Labour Office since 1920 under the title, "Legislative Series."

See Review of 1923 in 8 J. Soc. Comp. Leg., 3d ser., Pt. 1, 55-70.

International Labor Legislation. See also numbers of The American Labor Legislation Review.

Lassen, Julius. In Memoriam. A. I. 12 Am. Bar. A. Jour. 272.

Mohammedism—Islam and the Oregon Public School Law. By Hon. Pierre Crabites of the Mixed Tribunals, Cairo. 12 Am. Bar A. Jour. 753-757.

Mosul Dispute. Quincy Wright. 20 Am. J. Internat. L. 453-464.

Negotiable Securities—An Inter-American Negotiable Instruments Law. Charles Sumner Lobingier. 60 Am. L. Rev. 581.

Penal Law—

See Proceedings of the 1926 International Congress of Penal Law.

International Congress of Penal Law. 16 J. Crim L. 473.

Prisons—Prison Congress: National and International. (Ed.) 16 Jour. Am. Inst. of Crim. L. 1-5.

Ninth International Congress. Amos W. Butler. 16 Ibid. 602-609.

Pleading—Some Comparative Aspects of Civil Pleading Under Anglo-American and Continental Systems. Robert Wyness Millar. 12 Am. Bar A. Jour. 401.

Postal Arbitration—American-Norwegian Postal Arbitration. Editorial comment by Manley O. Hudson. 20 Am. J. Internat. L. 534-536.

Pan American Union, Legal Status of—. By Walter Scott Penfield. 20 Am. J. Internat., L. 257-262.

Pan American Sanitary Code, signed at Havana, Nov. 14, 1924. 20 Am. J. Internat. L. 34, in part devoted to Official Documents.

Private International Law—

Projet de Code de Droit International Prive. By A. S. de Bustamente y Sirven. Transl. from the Spanish by Paul Goule. Paris. Recueil Sirey, 1925. pp. 280. Review by Arthur K. Kuhn. 20 Am. J. Internat. L. 631-32.

Review of Legislation—British Empire including the British Isles, Dominions, Colonies, etc.; also France, Italy, United States of America, 8 Jour. Comp. Leg. 3d ser., Part 3.

Renvoi—Acquisition of foreign domicil and the doctrine of Renvoi. "Comment" by H. F. G. 25 Mich. L. Rev. 174-176.

Renvoi Theory Rejected—Exceptions. "Comment." 36 Yale L. J. 114-119.

Russo-German Treaty reviewed by J. W. Garner. 20 Am. J. Int. L. 530-533. Text of the Treaty is to be found in New York Times of April 27, 1926, p. 5, and in the Supplement to the Journal named.

Sea Law. See Waters.

The New Law for the Seas. Louis Franck. 42 L. Q. Rev. 25-36, 308-316.

Sherman, Gordon Edward. Obituary. 12 A. B. A. Jour. 128. See a word of tribute by C. O. J. Ibid. 340.

Treaties. See issues of The American Journal of International Law.

Treaties—The Dominions and Treaties. Sir William Harrison Moore. 8 J. Soc. Comp. Leg. 3d ser., Pt. 1, 21-37.

Universite de Lyon. Cinquantenaire de la Faculte de Droit. Le 18 Mars 1926. A mention. 70 Solic. J. 873.

The Vilna Dispute—Poland's boundaries with Lithuania. W. J. Brockelbank. 20 Am. J. Internat. L. 483-501.

Waters—See also Sea Law.

Territorial Waters. By Temple Grey. 42 L. Q. Rev. 350-367.

Woodward, Sir Lionel M.—Obituary of Chief Judicial Commissioner of the Federated Malay States. 60 Law Jour. (N. S.) 807.

Book Reviews

Administration—Precis Elementaire de droit Administratif. By Roger Bonnard. (Paris: Recueil Sirey. 1926. Pp. 555.);

Same title by Maurice Hauriou. Paris. Recueil Sirey, 1926. Pp. vi, 521. Review of the two by J. W. Garner. 20 Am. Pol. Sci. Rev. 429.

Allman, N. F.: Protection of Trade-Marks, Patents, Copyrights, and Trade-Names in China. Shanghai: Kelly and Walsh. American sellers, The Lawyers' Cooperative Publishing Company, Rochester, New York. pp. 212. $5 Mex. Review notice in 12 Am. Bar A. Jour. 61.

Alsace and Lorraine—L'Introduction du Droit Civil Francais en Alsace et en Lorraine. Etudes d'Histoire et de Droit par un Groupe de Magistrats, d'avocats et de Professeurs. Paris: Librairie Generale de Droit et de Jurisprudence, 1925. pp. 166. Review by Frederic R. Coudert. 20 Am. J. Internat. L. 635.

Arminjon, P.: Precis de Droit International Prive. Les Notions Fondamentales du Droit International Prix. Paris: Librairie Dalloz, 1925, pp. 248. Review by Ernest G. Lorenzen. 39 Harv. L. Rev. 664-5.

Aviation—Septieme Congress International de Legislation Aerienne du Comite Juridique International de l'Aviation.

Paris: Per Orbem, 1926. pp. 322. Review by Arthur K. Kuhn. 20 Am. J. Int. L. 825-827.

Candioti, Alberto M. Historia de la Institucion Consular en la Antiquedad y en la Edad Media. Buenos Aires: Editora Internacional, 1925. pp. xxv, 856. Index. Review by Walter Scott Penfield. 20 Am. J. Internat. L. 404-405.

De Bustamente: Proyecto de Codigo de Derecho International Privado. Havana: Imprenta "El Siglo XX." 1925. pp. 288. Review by J. H. Beale. 39 Harv. L. Rev. 285-'6.

Everett, Guerra: Commercial Books in Comparative Jurisprudence. 14 Georgetown Law Jour. 131-147.

Foote, John Alderson: A concise Treatise on Private International Law Based on the Decisions in the English Courts, 5th ed. by Hugh H. L. Bellot. London: Sweet & Maxwell, Ltd., 1925, pp. xxviii, 692. Index. Review by Arthur K. Kuhn. 20 Am. J. Internat. L. 409-410.

Frankenstein, Ernst: Internationales Privatrecht, vol. 1. Berlin-Grunewald: Dr. Walther Rothschild, 1926. pp. xxviii, 616. Review by Hessel E. Yortema. 40 Harv. L. Rev. 794-797.

Goadby (F. M.): International and Inter-religious Private Law in Palestine. Jerusalem, 1926. "Hamadpis" Press. pp. 305. Review by F. P. W. 9 J. Comp. Leg. 3d ser., Pt. 1, 145-146. (Mr Goadby believes the book to be the first legal work printed in English in Jerusalem)

Haralambidis, M. T.: Les Avaries Communes, according to the York and Antwerp Rules of 1924. A notice in 161 Law Times 370.

Hsieh, Pao Chao. The Government of China (1644-1911). Balto: The Johns Hopkins Press, 1925. pp. 414. Review by Payson J. Treat. 20 Am. J. Internat. L. 634-'5. By C. F. Remer. 20 Am. Pol. Sci. Rev. 218-220.

Jayawardene Don Andreas St. Valentine. Law of Partition in Ceylon. Colombo: The Ceylon Daily News. Rs. 15. Review by Anton Bertram. 8 J. Soc. Comp. Leg., 3d ser., Pt. 1, 154-156.

Kennett (Austin): Bedouin Justice. Cambridge: University Press, 1925. 8 vo. xiv and 158 pp. Review by M. S. A. 42 L. Q. Rev. 271.

Kennett (Austin), Sometime administrative officer in the Libyan Desert and in Sinai: Bedouin Justice. Cambridge University Press. 7s. 6d. Review notice in 90 J. of the P. 201.

Lee, R. W.: Introduction to Roman-Dutch Law, 2nd ed. (pp. XLVIII, 424). Review notices in 12 Am. Bar A. J. 319; 4 Canad. Bar Rev. 730.

Lindley, M. F.: The Acquisition and Government of Backward Territory in International Law. Review notice, 161 Law Times, 419.

Liu, Shih Shun: Extraterritoriality, Its Rise and Its Decline. New York: Longmans, Green & Co., 1925. pp. 235. Review by Harold S. Quigley. 10 Minn. L. Rev. 362.

Makeev (Nicholas) and O'Hara (Valentine). Russia. New York. Chas Scribner's Sons, 1925. Pp. xi, 346. Review by Malbone W. Graham, Jr. 20 Am. Pol. Sci. Rev. 680-682.

Millot (Albert): Les Mandats Internationaux. Paris: Emile Larose, Libraire Editeur, 1924. pp. iv, 255.

Joffre (Alphonse): Le Mandat de la France sur la Syrie et le Grand-Liban. Lyon. Imprimerie L. Bascou. 1924. pp. 150. Review of the two by C. G. Fenwick. 20 Am. J. Internat. L. 423-424.

Molitor (Erich): Das Wesen des Arbeitsvertrages. Eine Untersuchung ueber die Begriffe des Dienst-und Werkvertrages, sowie des Vertrags ueber anhaengige Arbeit. Leipzig: A. Deichertsche Verlagsbuchhandlung, 1925. pp. iv, 111. Review by N. I. 39 Harvard L. Rev. 410-411.

Munro, William Bennett: The Governments of Europe. New York: The MacMillan Company, 1925. pp. viii, 782. Review by Earl L. Shoup. 20 Am. Pol. Sci. Rev. 431-433.

Norman Law. Travaux de la Semaine d'Histoire du Droit Normand Tenue a Jersey du 24 Au 27 Mai, 1923. Caen: A. Olivier, 1925. pp. xvi, 420. Review by Theodore F. T. Plucknett: 39 Harv. L. Rev. 912-914.

Nussbaum (Arthur): Das Geld in Theorie und Praxis des Deutchen und Auslandischer Rechts. Tubingen: J. C. B. Mohr (Paul Siebeck) 1925. pp. xv, 278, Index. 20 Am. J. Internat. L. 424-425.

Olver (Graham): French-English Dictionary of Legal and Commercial Terms. London: Stevens & Sons. 1925. 8 vo. pp. xi, 170. Review by A. C. W. 42 L. Q. Rev. 126-7.

Pillet (Antoine): Traite Pratique de Droit International Prive. Paris: La Society Anonyme du Recueil Sirey, 1923-24. Vol. 1, pp. 789, Vol. 2, pp. 960. Review by Ernest G. Lorenzen. 35 Yale L. Jour. 898.

Ravenscroft (B. G.): International Trade Mark Law and Practice. 1925. Trade Mark Law Pub. Co., New York City. pp. 725. Review note. 12 Am. Bar. A. Jour. 61.

Stammler (Rudolf): The Theory of Justice. Translated by Isaac Husik. Modern Legal Philosophy Series. New York: The Macmillan Co. 1925. pp. xli, 316. Review by Joseph H. Drake. 12 A. B. A. Jour. 476-479.

Stuart (Graham H.): The Governmental System of Peru. pp. 156. Review notice in 20 Am. Pol. Sci. Rev. 456.

Villacorta (J. Antonio): Monografia del Departmento de Guatemala. A mention. 20 Am. Pol. Sci. Rev. 927.

Weiss (Andre): Manuel de Droit International Prive. 9th ed. Paris: Receuil Sirey, 1925. pp. xxxviii, 737. Review by Arthur K. Kuhn. 20 Am. J. Internat. L. 428-429.

Westlake: Private International Law, 7th edition. By Norman Bentwich. London: Sweet and Maxwell, 1925. Review notice: 4 Canad. Bar Rev. 223.

Williams (Ivy): The Swiss Civil Code (English version). Oxford: University Press. Humphrey Milford. 1925. XLIV and 287 pp.; American Branch, New York. Review in 42 L. Q. Rev. 274. Review notes in 60 Am. L. Rev. 159, 12 Am. Bar A. Jour. 319.

L. E. H.

Modern Civil Law. By Charles A. Lobingier. Corpus Juris, Vol. 31, The American Law Book Company Brooklyn.

Louisiana jurists will tell you that a partnership is cumulative and synallagmatic. To clothe a simple partnership in such mystic garb seems strange to the common lawyer. However, it depends on the point of view. Imagine trying to convince a civilian that such familiar concepts as cypres, profits a prendre, and cestui que vie are not mere mutterings from a deranged mind!

At a recent meeting of the American Foreign Law Association distinguished jurists from Panama and France spoke on possible civil law substitutes for common law trusts. The two speakers were learned in both systems of law and were particularly well informed on the English law trust. To the majority of lawyers in civil law countries, the doctrine of trusts is as elusive as mercury. They regard it either as a sort of juridical alchemy, as pure sophistry, or as mental legerdemain of the fourth dimension, defying all epistemologic analysis.

Failure to grasp the import of terminology used to describe foreign juristic institutions may lead to serious misunderstanding. I recently published a statement, intended for American readers, that there was no system of equity in Czechoslovakia. Forthwith a lawyer from Prague took me to task, saying that I had implied that there was no justice in Czechoslovakia. It required eight close-typed pages of explanation to dissuade him from offering me the choice of pistols or cutlasses.

In this enlightened era, when nations and peoples of nations are being drawn together for defense against the common enemies of man, and the earth is becoming closely reticulated by developments in transportation and the communication of ideas, American lawyers would well deserve the stigma of provincialism if they did not make an effort to acquire an understanding of the principles, customs, and traditions of other systems of law than their own. The law is often accused of being a step behind sociological requirements. In their knowledge of foreign systems of law, American lawyers should, for pride of profession, be one step ahead of the intercourse between the American people and their foreign cousins.

In the intercourse of nations, commerce always leads the way, and of late much attention has been paid to the study of comparative commercial law. Walton collected the commercial and maritime legislation of the Western Hemisphere for the United States Government, and Obregon has written a text book of novel impression on Latin American commercial

Law. The Division of Commercial Laws of the United States Bureau of Foreign and Domestic Commerce is engaged in collecting and disseminating data concerning trade laws of all countries, and has published a number of monographs of permanent value. For a fundamental understanding of foreign juridical systems, however, one must not be restricted to the commercial law, but must have access to information about the general, or civil, law. Knowledge of Roman Law principles is prerequisite to an intelligent appreciation of the systems in force in the countries of Southern Europe and Latin America. Sherman has laid the proper foundation by delineating the influence of Roman Law in the modern world. Guides to the law and legal literature of Spain, Germany, Argentina, Brazil, and Chile have been published by the Law Division of the Library of Congress, and translations of foreign civil codes are being published by the Comparative Law Bureau of the American Bar Association.

It is significant that Corpus Juris should decide to include a title on Modern Civil Law in the forthcoming volume, and that it should entrust the task of redacting it to Charles S. Lobingier of the Comparative Law Bureau, who is eminently qualified for it by virtue of his long experience on the Philippine Bench and his practical connection with insular jurisprudence in general.

Considering the immensity of an undertaking to collate the legal institutional provisions of all countries which inherit shares in the ancient law of Rome, in so limited a space as a title in an encyclopedia, Judge Lobingier has done well. It is inevitable that in a work of this kind, approached for the first time, discrepancies should stray in. He states at one place, for example, that the civil law has never needed to devise a separate system of equity, and yet a few lines later he says that "the term jus civile was employed in contradiction to prætorian law, a newer and more liberal system." This discrepancy is, perhaps more apparent than real, and presupposes a back ground of knowledge of the Roman law.

The subject matter is concerned with modern civil law, and the material offered is up to date as far as possible. The works of living writers are frequently cited in footnotes, including Radin, Sherman, Smith, Schuster, Gil, Wheless, and the author himself, who is a prolific writer in this field. It is to be regretted that in a list of countries having civil codes, several which have adopted them in the course of the last few months should be omitted, and that no mention should be made of the recodification movements now current in several countries, with some of which the author is known to have manifested an active interest.

Washington. GUERRA EVERETT.

Ku Klux Klan Ouster Stands

(Continued from page 201)

raising various constitutional questions under the First and Fourteenth Amendments of the Constitution. The defendant in error in its brief in reply denied that there was any constitutional question properly before the court on the record, except possibly that of interstate commerce, which had been carefully guarded in the judgment of the court below. It insisted that the findings of fact of the court below and the construction of the statute by the highest court in the State, there being no Federal constitutional question involved, could not be disturbed.

Kentucky Bar Association Meets

The Kentucky State Bar Association met at Louisville, Kentucky, April 7th and 8th, 1927. Judge Clem S. Nunn presided. Among the important features of the program was the address of N. T. Guernsey, Vice-President and General Counsel of the American Telephone & Telegraph Company, on the subject of "State Regulation of Public Utilities." Another important address was that of Mr. William Allen White of Emporia, Kansas, which was delivered at the annual dinner on the evening of April 8th. Mr. White subject was: "Our Changing Times."

Other interesting addresses on the program were the address of welcome by Frank M. Drake, president of the Louisville Bar Association; "Some Great Lawyers of Kentucky," by W. W. Thum, Louisville; "The Motor Bus and the Law," by John C. Worsham, Henderson; "The Province of the Judge in the trial of Jury Cases," Judge Bunk Gardner, Mayfield; "Suggestions for Improving Practice and Procedure in Kentucky, by S. S. Willis, Ashland.

The Report of the Law Reform Committee, of which I enclose you a copy, contained a rather ambitious program. The Bar Association approved the following recommendations of that committee:

(1) That the Association favors the proposed amendment to the state constitution which would remove the present limit of $5,000.00 which the Constitution places on all salaries of state officers except the governor.

(2) The Association approves and recommends the adoption of an amendment to the Constitution of Kentucky which will remove the present limit of two amendments which is all that can now be submitted at any one election.

(3) The Association opposes an amendment to the Statutes permitting the prosecuting attorney to comment upon the failure of the accused to testify in a criminal case.

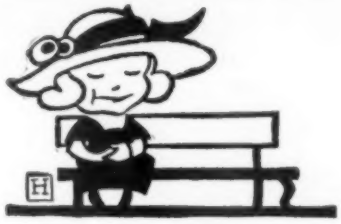
The three matters already mentioned provoked such lengthy debate that it was found necessary merely to file the balance of the report without asking any action thereon except as to Section 11 of the Report, which provided that this Association create a Standing Committee on Uniform Laws to consist of the Commissioners on Uniform Laws from the State of Kentucky. That proposition was approved.

The officers elected for the year 1927-1928 are as follows:

President, J. E. Robbins, Mayfield; Vice-Presidents, 1st district, John W. Blue, Marion; 2nd, John A. Dean, Owensboro; 3rd, John E. Richardson, Glasgow; 4th, Mortimer Viser, Louisville; 5th, Wallace Muir, Lexington; 6th, A. H. Barker, Falmouth; 7th, John T. Metcalf, Winchester.

Executive Committee: David R. Castleman, Louisville; Harry B. Mackoy, Covington; John L. Dorsey, Henderson; George B. Martin, Catlettsburg; Charles D. Grubbs, Mt. Sterling; Clem S. Nunn, Marion. Secretary, J. Verser Conner, Louisville. Treasurer, Clinton M. Harbison, Lexington.

J. VERSER CONNER,
Secretary.



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